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IN THE

Supreme Court of the United States

OCTOBER TERM—1956

No.

~~749~~ 76

REBECCA MAISENBERG,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

GOODMAN, CROCKETT, EDEN & ROBB,

Counsel for Petitioner,

3220 Cadillac Tower,

Detroit 26, Michigan.

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REBECCA MAISENBERG,
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—♦—
**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE
SIXTH CIRCUIT**

—♦—
Petitioner prays for a Writ of Certiorari to review a final judgment of the United States Court of Appeals for the Sixth Circuit affirming the judgment of the United States District Court for the Eastern District of Michigan, Southern Division revoking and cancelling Petitioner's Certificate of Naturalization.

OPINION BELOW

A single opinion was rendered on November 26, 1956 by the Court of Appeals in this case and the case of *Nowak v. United States* (in which Petition for Certiorari also is being filed). The opinion does not appear to have been reported. A copy is included in the Appendix to the *Nowak* Petition.

The opinion of the District Court is unreported but is included in the Appendix to Appellant's Brief in the Court of Appeals.

JURISDICTION

The judgment of the Court of Appeals was rendered on November 26, 1956. The jurisdiction of the Supreme Court of the United States is invoked pursuant to the provisions of 28 U. S. C. Sec. 1254.

QUESTIONS PRESENTED

1. Does the "Affidavit of Good Cause" filed with the Complaint herein satisfy the requirements set forth by this Court in its opinion in *U. S. v. Zucca*, 351 U. S. 91?

2. Does the evidence establish the charge that Petitioner's naturalization was procured by concealment or misrepresentation?

3. Is the Naturalization Court's finding of good moral character and attachment subject to re-examination?

4. Was Petitioner deprived of her citizenship in violation of rights guaranteed her under the First and Fifth Amendments to the Federal Constitution?

STATUTES INVOLVED

All of the statutes involved in the Petition in *Nowak* (pps. 3-5) are involved here. Additionally, there is involved here the Immigration and Nationality Act of 1952 (66 Stat. 166, 8 U. S. C. A. 1101, *et seq.*) The cancellation provision under this 1952 law (Section 340) is essentially the same as under the 1940 Act except that the grounds for cancellation were changed. Cancellation was authorized "on the ground that such order and certificate of naturalization was procured by concealment of a material fact or by willful misrepresentation * * *." (8 U. S. C. A. 1451(a).)

STATEMENT

Petitioner was born in Russia in 1901. She came to this country in 1912 with her mother, sister and two brothers to reside with their father in New York City. In 1917 she married and in 1926 she and her husband moved to Detroit where they have lived ever since. From 1926 to 1937 Petitioner and her husband operated a hat and dress shop in Detroit. Her husband is a naturalized citizen. Petitioner was naturalized by the Federal District Court at Detroit on January 24, 1938. She has no criminal record. She and her husband have one daughter and two grandchildren.

The Pleadings

This denaturalization proceeding instituted in March, 1953 is pursuant to the Immigration and Nationality Act of 1952. The Amended Complaint (App. 2a)¹ charges in the

¹ "App. 2a" refers to the printed Appendix filed with the Appellant's Brief in the Court of Appeals.

language of that Act, the Petitioner's naturalization was procured "by concealment of material facts and by wilful misrepresentation", in that the following statements made by her under oath were knowingly false:

"(a) That she fully believed in the principles and form of government of the United States; and that she did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country. This statement was made in Preliminary Form for Petition for Naturalization filed with the District Director Immigration and Naturalization Service, Detroit, Michigan, on or about June 30, 1937; •

(b) That she was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government; that she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and that she would renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty of which she was a subject, and particularly to the Union of Soviet Socialist Republic. This statement was made in her petition for naturalization;

(c) That she would support and defend the Constitution and laws of the United States of America against all enemies foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation without any mental reservation or purpose of evasion. This statement was made in open court in Oath of Allegiance, more fully set out in paragraph 5;"

The above statements are claimed to be false because the Petitioner was a member of the Communist Party of the United States from 1930 to the date of her naturalization in 1938; that she concealed this fact; and, that during this time the Communist Party "Advised, advocated, or taught the overthrow by force and violence of the government of the United States", and was a section of an international organization in Moscow whose decisions were binding upon the Communist Party of the United States and its members; and that Petitioner "was familiar with and approved of the above teachings of the Communist Party."

Attached to and made a part of the Complaint is the affidavit of one Reuben Speiser (App. 8a) who appears to be the same affiant and the affidavit is essentially the same in form as the affidavit described in the *Nowak* Petition for Certiorari (pps. 7-8). The allegations of the affidavit are virtually identical with those quoted above from the Amended Complaint.

Petitioner's Motion to Strike certain portions of the Complaint and Affidavit (App. 13a); or in the alternative to require more specific information concerning the "official records" referred to in the affidavit and the production of such as are referred to in the affidavit, was denied.

Petitioner's Answer admitted execution and filing of the Petition for Naturalization, the taking of the oath and the grant of naturalization, but placed in issue all the other material allegations of the Complaint.

The Answer also challenged the sufficiency of the affidavit of "good cause". Additionally, it moved for dismissal of the Complaint on the ground that Section 340

(a) of the Immigration and Nationality Act (8 U. S. C. A. 1451 (a)), under which this action is brought, on its face and as applied to Petitioner, is unconstitutional under the First and Fifth Amendments to the Federal Constitution.

The Evidence

Six (6) witnesses were called by the Government, five of whom identified the Petitioner as a member of the Communist Party in the pre-1938 period.² The testimony of these witnesses is summarized in an Appendix to this Petition, wherein we set forth their verbatim testimony as to everything related to the issue of advocacy of force and violence by this Petitioner or by anyone else in Petitioner's presence.³

Additionally, it was stipulated by counsel for the respective parties that two other non-resident witnesses, John Lautner of New York City and Frank Meyer of Chicago, if called as witnesses by the Government, would each testify that he was "an active member and functionary of the Communist Party of the United States" from 1929-1950 and 1934-1945 respectively; and

"that it was their understanding, on the basis of their membership, training experience, and activities in the Communist Party of the United States and on the basis of the documents, pamphlets and literature hereinafter mentioned, which were circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period of their membership, that during the entire period of their membership the Communist Party of the United States advocated, taught, and advised the

² The Trial Court permitted another witness, Baldwin, to testify as to the Petitioner's membership in the post-1938 period (Tr. 141).

³ In the preparation of this Appendix, we have endeavored to include every reference to Trial Transcript cited or relied upon by the Government in its brief below.

overthrow of the government of the United States by force and violence.”

It was further agreed that the above stipulation and the documents listed therein would be received in evidence in lieu of the appearance of these witnesses.⁴

No evidence was offered by Petitioner.

⁴ The following documents were received as Government Exhibit No. 3.

(a) “The Communist Manifesto”, by Carl Marx and Frederick Engels, by International Publishers, Inc.;

(b) “State and Revolution”, by V. I. Lenin, copyrighted 1932 by International Publishers, Inc.;

(c) “Left Wing Communism and Infantile Disorder”, by V. I. Lenin, copyrighted by International Publishers, New York, 1940;

(d) “Program of the Communist Internationale”, copyrighted by Workers Library Publishers in 1929, third edition printed in February, 1936;

(e) “Foundations of Leninism”, by Joseph Stalin, copyrighted in 1939 by International Publishers, Inc.;

(f) “The Communist Party. A Manual on Organization”, by J. Peters, published in 1935 by the Workers Library Publishers;

(g) "The Struggle Against Imperialist War and the Tasks of the Communists", published by the Workers Library Publishers, second edition of July, 1934;

(h) "Why Communism", by M. J. Olgin, published by Workers Library Publishers, December 1933;

(i) "Why Every Worker Should Join the Communist Party", published by Workers Library Publishers, Inc., no printing date being shown;

(j) "Problems of Leninism", by Joseph Stalin, copyrighted in 1934 by International Publishers Company, Inc.;

(k) "The Ultimate Aim", copyrighted in 1935 by International Publishers Company, Inc.;

(l) "Report to the Eighth Convention Communist Party", by Earl Browder, 1934, published by Workers Library Publishers;

(m) "Resolutions of the Seventh Congress of the Communist Internationale", published in 1935, Workers Library Publishers;

(n) "The Twenty-One Conditions of Admission into the Communist Internationale", by O. Piatnitsky, published by Workers Library Publishers, published February 1934.

(There is no evidence here that this Petitioner ever read or was in any way familiar with the contents of any of these books.)

The Opinion Below

The Trial Court's opinion (App. 26a) sustained the sufficiency of the "good cause" affidavit. The Court said:

"To begin with, there is a presumption that recorded acts of government officials and general records are regular (*LaPorte v. Bitker*, 145 F. (2d) 445), a presumption which can be overcome only by clear evidence to the contrary (*Reines v. Woods*, 192 F. (2d) 83). While it does not appear probable under these circumstances that an attorney making an affidavit would purposely misquote the record, it is possible, and defendant should have the opportunity to make an examination and to check those records, but the presumption still remains in favor of their accuracy. See *U. S. v. Leles*, 227 Fed. 189; *Turlej v. U. S.*, 31 F. (2d) 696."

On the issue of concealment and misrepresentation, the entire opinion of the Trial Court was as follows:

"This is an action to cancel defendant's certificate of naturalization on two grounds (1) concealment of a material fact, and (2) wilful misrepresentation.

"The proof is similar to that found in the case of *U. S. v. Nowak* decided July 15th, 1955 by this court, and the court finds that defendant did conceal (a) the fact that she was a member of the Communist Party when she filed her petition and when she obtained her citizenship; (b) that she was aware that the Communist Party, to which she belonged, was an organization having as an objective the overthrow of this government by force and violence; (c) that she was not a person of good moral character attached to the principles of the Constitution of the United States and (d) well disposed to the good order and happiness of the same, and that, on the contrary, she represented that (a) she was a person

of good moral character (b) attached to the principles of the Constitution of the United States (c) well disposed to the good order and happiness of the same, and (d) ~~not a member of any group opposed to those principles or having as an objective the overthrow of the government of the United States by force and violence.~~

"It is apparent, therefore, that this court has adequate grounds for the cancellation of her citizenship."

The Order of Cancellation (App. 28a), entered on August 12, 1955, refers to the opinion but does not set forth the grounds for cancellation.

The Court of Appeals, affirming the Trial Court, held that all of the legal issues presented (except as to the sufficiency of the affidavit of good cause) "have been adjudicated adversely" to Petitioner by the prior opinions of the Court of Appeals wherein that Court had cited the Supreme Court's holding in *Knauer v. United States*, 328 U. S. 654; *United States v. Ginsberg*, 243 U. S. 472; *Schneiderman v. United States*, 320 U. S. 118; and *Dennis v. United States*, 341 U. S. 492. It concluded that the District Court's findings "were not clearly erroneous" and that its conclusions of law were "supported by the highest authority."⁵

The Court of Appeals also held that the affidavit of good cause here "was an adequate compliance with the statutory requirements as interpreted in the *Zucca* case," (351, U. S. 91).

⁵ The Court of Appeals relied upon its prior decisions in the *Sweet, Charnowola* and *Chomiak* cases, 211 F. (2d) 118 (1954), cert. den. 348 U. S. 817. However, naturalization in each of these cases had been granted under the 1940 Act and, as we had pointed out above (*supra*, 3-4) the qualifications were different from those under the 1906 Act which is involved here.

REASONS FOR GRANTING THE WRIT

All of the reasons as set forth in the *Nowak* Petition, for the granting of the writ there apply here. Additionally, here we deal with a denaturalization proceeding instituted under the new provisions of the 1952 Act. As we have seen (*supra*, p. 3) this new Act changes the grounds for denaturalization. It is believed that this is the first time this Court has been asked to pass upon the meaning and the effect of the new grounds for denaturalization.⁶

ARGUMENT

I.

THE AFFIDAVIT OF GOOD CAUSE DOES NOT SATISFY THE REQUIREMENTS OF UNITED STATES v. ZUCCA

As we have stated above, there is no substantial difference in form or content between the "affidavit showing good cause" here and that filed in *Nowak*. Accordingly, we incorporate here by reference our argument made in the *Nowak* Petition (pp. 19-24).⁷

⁶ Government Counsel advised the Trial Court that this is the first case to be tried under the 1952 Act. (Transcript of January 26, 1955, p. 18.)

⁷ Since the Petition in *Nowak* was filed, our attention has been called to the unreported decision of Judge Harrison in *United States v. Diamond*, S. D. Cal., No. 17412-BH, decided July 26, 1956. Judge Harrison, citing this Court's holding in *Zucca*, held that the filing of a sufficient affidavit at the time the cause is instituted is jurisdictional; and the failure to do so is not cured by the subsequent filing, nor by the presentation of all of the Government's proofs at the trial. The Government has appealed from his dismissal of the action.

II.

**THE EVIDENCE FAILS TO ESTABLISH THAT PETITIONER'S
NATURALIZATION WAS PROCURED BY CONCEAL-
MENT OF MATERIAL FACTS OR WILLFUL
MISREPRESENTATION**

This Court is called upon for the first time to determine the meaning of the new grounds for denaturalization set forth in the 1952 Act. The prior law authorized denaturalization in cases where the certificate of naturalization was obtained by fraud, or was illegally procured. The 1952 Act substitutes the language "procured by concealment of a material fact or by willful misrepresentation."

We assume here, solely for the purposes of our argument, that Petitioner was a member and held a local office in the Communist Party at the time of her naturalization in 1938 and for a period of years prior thereto. It is conceded by the Government (Transcript for Jan. 26, 1955, p. 12) that she was not asked whether or not she was a member and it is clear she did not volunteer this information.

The first question, therefore, is whether or not this constituted "concealment of a material fact or willful misrepresentation" within the meaning of the 1952 Act.

Shortly after the 1952 Act became effective (December 24, 1952) the Harvard Law Review (66 Harv. L. R. 643) presented an extended article entitled "Developments In the Law—Immigration and Nationality". At page 719 the editors have this to say about the new grounds for denaturalization set forth in the 1952 Act.⁸

⁸ We omit here the copious footnotes.

"Grounds.—(a) In General.—Prior to the 1952 Act, a judgment of denaturalization could be secured only upon a finding that the naturalization decree was obtained by 'fraud' or 'illegal procurement'. In practice courts often found it difficult to differentiate these two grounds and failed to specify upon which the cancellation rested.

"Naturalization was illegally procured if some statutory requirement needed to qualify the alien for citizenship was lacking when the petition was granted. Thus where the final hearing on naturalization was held in the judge's chambers instead of in open court as required by law, citizenship was illegally procured. However, other procedural irregularities were often considered of minor importance and were discounted as mere technical or clerical errors. Cancellation for illegal procurement was also granted where the alien's conduct previous to naturalization showed a lack of good moral character. In such cases revocation might have been based on fraud because the petitioner had failed to disclose conduct he knew to be illegal but the Government by proceeding on the ground of illegal procurement avoided having to prove an intentional withholding of information.

"In those cases where fraud was alleged, attempts to define the term led to confusion. Some courts held that only 'extrinsic' fraud was sufficient for denaturalization, some talked in terms of 'legal' fraud, and others realistically ignored these vague and artificial categories and considered only whether the act in question constituted concealment or misrepresentation.

"The 1952 Act drops illegal procurement as a basis for denaturalization and so eliminates the harsh consequences of mere procedural defects over which the prospective citizen had no control. Fraud is replaced by the more precise terms, 'concealment of a material fact or * * * willful misrepresenta-

tion.' Since it was the primary intent of Congress to clarify the meaning of fraud, cases decided under the old provision may still be of assistance. Although the new Act does not specifically define 'concealment', previous use of the word in fraud cases and its normal connotation indicate that intent is necessary. A 'material fact' as expressed in the Act would seem to be one which if known at the time of naturalization would have prevented the granting of citizenship. This would include illegal entry, insufficient period of residence, and any fact showing lack of good moral character, such as a past criminal record.

"The new language presents a troublesome problem of construction in that willful misrepresentation is not expressly restricted to material facts. Hence it can be argued that the intentional misstatement of any fact would be grounds for denaturalization; but it is doubtful that where minor prevarications are involved the Government would seek revocation or a court would find that the necessary willful misrepresentation existed. Furthermore, the results of earlier cases indicate that fraud had to concern a material fact, even when the statute did not so require. However, any misstatement bears directly on the material fact of good moral character, and thus it is possible that minor misrepresentations may be held sufficient for denaturalization."

Included as footnote 603 to the above discussion is the following:

"In recommending a return to the prior provisions (i. e. fraud and illegal procurement) the President's Commission argued that the new grounds will result in greater confusion, *and that with the deletion of illegal procurement, a subversive or criminal is subject to denaturalization only if questioned when naturalized about his unlawful activities.* President's Commission Report 249 (1953)." (Emphasis ours.)

A more extended treatment of the denaturalization provision of the 1952 Act is to be found in 51 Mich. L. R. at page 893.

We think it clear that "concealment of a material fact or willful misrepresentation" are merely different sides of the same coin; both are embraced within the term "fraud" as that term is judicially understood. Indeed, Government counsel informed the Trial Court here (Transcript for Jan. 26, 1955, p. 13):

"While the framers of the Act did not intend to do so, I am certain, they have practically—and I won't—I am not admitting this, but for the purpose of argument it seems to me that they have written illegality out as a ground for denaturalization and that concealment of a material fact or misrepresentation are just two elements of fraud, in effect.

.

"The Court (interposing): You claim fraud.

Mr. Hamborsky: We haven't claimed fraud.

The Court: What do you claim?

Mr. Hamborsky: We claim concealment of a material fact and for willful misrepresentation.

The Court: Well, isn't that fraud?

Mr. Hamborsky: That is right. That is exactly what I say, that—."

As we point out in our Petition in *Nowak* (p. 25), at least three primary elements must converge before a claim of fraud is established. There must have been (a) a misrepresentation (or concealment) of (b) a material fact with (c) knowledge of its falsity. Thus, if the finding of fraud is to be sustained here, it must appear from the record by "clear, convincing and unequivocal" evidence that:

1. Communist Party membership was material on the issue of Petitioner's naturalization;
2. Petitioner misrepresented (or concealed) her alleged Communist Party membership by giving a negative answer to Question 28; and
3. Petitioner must have known that her negative answer to Question No. 28 was false.

Petitioner here was naturalized in the same year (1938) and under the same statute as that under which the Petitioner in *Nowak* was granted citizenship—the 1906 Act. Our legal argument and the authorities cited in the *Nowak* Petition (pp. 25-32) in support of the view that Communist Party membership was immaterial to naturalization under the 1906 Act, and that a negative answer by a Communist Party member to Question No. 28 in the Preliminary Form of Petition for Naturalization, did not constitute concealment or misrepresentation is equally applicable here and is, therefore, incorporated herein by reference. We would supplement our argument in *Nowak* by pointing out that, unlike in *Nowak*, there is here no claim by the Government that Petitioner was asked concerning Communist Party membership.

The Showing As to Petitioner's Knowledge of the Advocacy of the Communist Party

We come, then, to the third essential requirement which the proofs here must meet before a charge of concealment or wilful misrepresentation is established, namely, a showing that Petitioner herself taught and advocated doctrine proscribed by the 1906 Act or that she knew the Communist Party as an organization which engaged in such teaching and advocacy. *Schneiderman v. United States*, *supra*, and *Weiman v. Updegraff*, 344 U. S. 183:

We invite the attention of the Court to the Appendix which we have included with this Petition. We believe this Appendix not only gives a complete summary of the evidence adduced by the Government; it also gives, in question and answer form, the exact testimony of every witness concerning his understanding of what allegedly was taught him at various Party "schools" or what he was told by alleged officers of the Party.

We submit that a mere reading of this testimony will show that it does not begin to approximate the "clear, unequivocal, and convincing" proof required by *Schneiderman, supra*. And this is so even if it be assumed that membership of the Petitioner in the Communist Party is established. The Trial Court found that the Party had as its objective in 1938 the overthrow of the Government of the United States by force and violence and that Petitioner was aware of this objective. We submit that, under the *Schneiderman* standard, the evidence here fails to support these findings.

There is, however, a further defect in these findings. The findings—and the evidence on which they are predicated—fail to establish the requirements of the statute (the 1906 Act). For, as we have seen, the 1906 Act was addressed to anarchy and did not encompass organizations having as "an objective" the overthrow of existing government in this country.

None of the evidence here supports the view that the Communist Party was an anarchist organization; and certainly there is no proof that this Petitioner knew it as such. Thus, the finding of the Trial Court in this respect not only fails to bear out the requirement of the statute and the allegations of the Complaint; there is here no evidence upon which a legally sufficient finding of "concealment" or "willful misrepresentation" could have been made.

III.

**THE NATURALIZATION COURT'S FINDING OF GOOD
MORAL CHARACTER AND ATTACHMENT
CANNOT BE RE-EXAMINED IN THE
ABSENCE OF FRAUD**

The argument set forth in the *Nowak* petition (pp. 42-46) in support of this contention applies with equal force here. We have seen that the 1952 Act's use of the phrase "concealment of a material fact or willful misrepresentation" was meant to cover the former Act's requirement of or showing of fraud. We have pointed out that the evidence here fails to show fraud. The Trial Court, however, predicated its finding of lack of good moral character and attachment upon the fact (which we have assumed throughout) that the Petitioner was a member of the Communist Party and concealed such membership. If, as we have argued herein, such membership was immaterial, was not proscribed by the 1906 Act, and Petitioner had no reason to ascribe the proscribed qualities to the Communist Party at the time of her naturalization, then it cannot be said that her failure to disclose such membership is indicative of bad moral character or lack of attachment to the principles of the Constitution.

IV.

**THE ORDER OF DENATURALIZATION VIOLATES THE
FIRST AND FIFTH AMENDMENTS**

Here, again, the argument of this point in the *Nowak* Petition (pp. 46-49) is pertinent. Notwithstanding the suit here is under the 1952 Act rather than the 1940 Act, the result is the same. The judgment, if authorized by that Act, nevertheless has the effect of penalizing this Petitioner for alleged speech and associations protected

by the First and Fifth Amendments. Nowhere in this entire record is there any evidence of the use by this Petitioner or anyone in her presence of "language inciting to action"; nor is there here any evidence from which it could possibly be concluded that the Communist Party in 1938 presented "a clear and present danger of substantive evil".

CONCLUSION

The Writ of Certiorari should issue and the judgment below should be reversed.

Respectfully submitted,

GOODMAN, CROCKETT, EDEN &
ROBB,

By: ERNEST GOODMAN and
GEO. W. CROCKETT, JR.,
Counsel for Petitioner.

Detroit, Michigan,
January, 1957.

APPENDIX

The following excerpts from the Trial Transcript represent all of the oral testimony adduced by the Government's witnesses on the question of teaching and advocacy by the Petitioner, or by the Communist Party, of the "overthrow of the government of the United States." The excerpts are given chronologically and the page reference is shown for each. The designation (N. —) refers to the separate transcript for the witness Nowell.

WITNESS NOWELL

[Witness Nowell identified Petitioner as a Section Organizer for the Communist Party in Detroit in the period from 1930, when he allegedly assisted in recruiting her into the organization (N. 26) until the latter part of 1935 when Nowell left the organization. He also testified that during his membership in the Party he was taught that the Communist Party of the United States was a section of the "parent" organization, the Communist International, whose decisions were binding upon each member of the Party (Tr. 22-24). The witness was asked to describe the duties of the Petitioner as a Section Organizer:]

(N. 30) A. Her duties were to transmit and implement the decisions of the District Bureau to the Section membership; to direct the Party membership of the Section through the Section Bureau and the Unit organizers. To serve as the physical and political contact between the District Committee and the Bureau and the Section Committee of that Section. And, of course, the duties constituting her work of the Communist Party in that Section. She was responsible, politically responsible for effecting the policies of the District Bureau.

Q. And during the period of your membership in the Communist Party and your familiarity with Rebecca Maisenberg, did you ever have occasion to discuss with her the policies, aims and objectives of the Communist Party?

A. Yes, I did.

Q. And what did she say or what did you say?

.

A. It is not limited to one occasion, nor do I purport to quote verbatim what she said. From the latter part of 1935—and this is a little bit at variance with the question, but I am simply qualifying it with sort of an introductory remark—I was a member until I left the Communist Party at the end of the 1936. So, therefore, it was more than one conversation, over a period of six years, I have discussed with her the aims and purposes of the Communist Party.

.

(N. 31) Q. (By Mr. Hamborsky): And I would like to know what she said in respect to them?

A. *Well, she adhered to the principles and objectives and the final objective of the Communist Party.*

.

(N. 32) A. I meant she said she adhered. That is actually what I meant. On occasions at Section and Bureau meetings, where she was required to give reports to the Section Committee, on policies and on decisions of the Bureau, involving decisions of the Central Committee or instructions that were set forth in the theoretical articles—political theoretical articles, it was her duty, as it was all Section organizers, to explain these to the membership. Frequently I had discussed it with her and she said *that she adhered to the principles and objectives and the final objective of the Communist Party of the United States and the Comintern.*”

.

(N. 33) Q. (By Mr. Hamborsky): And did you ever have occasion to discuss with her her personal beliefs in respect to those aims and objectives?

A. Most of the discussions were about her personal beliefs. Yes, I did.

Q. And what did she say in respect to that?

* * * * *

A. Well, in 1930, when Samuel Milgrim and I, at the Workers Club, Jewish Workers Club, were recruiting or attempting—

* * * * *

(N. 34) A. And Milgrim and I explained the whole of the program, policies, and final objective of the Communist Party, *including the violent overthrow of the government.*

The Court: You told her that that is the ultimate plan of the Communist Party?

A. That is correct.

The Court: *The overthrow of this government by force and violence?*

A. *Surely, so she said this—I quote almost verbatim—that she agreed with that policy* and that was not the reason she had not joined and was, perhaps, a little hesitant for some time, but she had a family and they had a business, and she was helping her husband and one of the children were—was fairly young and she was—

The Court (interposing): One child was what?

A. Was rather young, and that she did not feel that she had the time before then to participate fully in Communist Party activities. But then she felt she could, so she agreed to join.

The Court: That was about—that was when?

A. 1930.

Q. (By Mr. Hamborsky): Well, then, I believe you have stated her activities in the Party, at least up until the time you left? Is that what you have testified to before?

(N. 35) A. Generally those were her activities. I can't go into detail because they were many.

[On cross-examination Nowell testified that he recruited "perhaps 15 or 20 persons into the Communist Party" in the six or seven years of his membership. (N. 45-46) He did not always tell his new recruits that the "*objectives of the organization they were joining was that they must want to overthrow the government of the United States by force and violence*" but he did remember "more or less speci-

cally" telling the Petitioner that this was the objective. (N. 47) He admitted that the first time he "specifically" had occasion to recall this conversation with Petitioner was "approximately two years ago"; which was "approximately twenty-two years after the conversation occurred". (N. 50) He stated that the conversation and recruitment of Petitioner occurred in a clubroom in which were "not more than ten or twelve people" milling about the place, talking in groups, some sitting and some of them standing; this was the night Petitioner "agreed to join the Communist Party" and "Milgrim supplied her with the application card". (N. 51-544.)

Nowell left the Communist Party at the end of 1936. Since 1939 he had been "very strenuously and openly anti-Communistic, that is, in the sense that he had both spoken and testified against the Communists or the Communist Party." He stated "I have been opposed in principle to the theory, program, strategy, tactics and the whole of Communism since I left it at the end of 1936" (N. 60).

Beginning in 1940 Nowell was employed by the Ford Motor Car Company "providing information concerning Communism, Communists, or the Communist Party to the company" and also "to the Federal Bureau of Investigation" (N. 62).

Since 1948 he had been employed by the Immigration and Naturalization Service on "work in connection with Communism, the Communist Party and related matters." Among his duties is that of "identifying persons as having been members of the Communist Party" (N. 72-75).

He stated that he had testified for the Service in "approximately 35 deportation and denaturalization proceedings and he had testified in "about six" Smith Act cases. His employment carried no Civil Service status. It had been on "a contract basis" but at the time of his appearance here he was "employed from day to day" at \$25.00 per day. This was his only employment and "the understanding" was that he would be employed 18 days a month (N. 78-79).

On re-direct examination Nowell testified as follows:]

(N. 86) Q. (By Mr. Hamborsky): Now, I believe, Mr. Nowell, in answer to a question by Mr. Goodman that Com-

munist recruiters normally explained the aims and objectives of the Communist Party to be overthrow by force and violence, your answer to that question or a similar question was "not always". Would you explain that, now?

A. Yes. There were cases—in fact, I know of cases where you did not recruit—I did not, and I think possibly there have been others where—if this is acceptable, this is my assumption there—you did not discuss the violent overthrow of the government, that is, the overthrow of the government by force and violence. You simply told them the elemental program of the Communist Party linking with that its final objective which was the overthrow of capitalism and establishing the Soviet system. That always was explained. We didn't always use the exact terminology that you used there.

Also much depended upon the degree of political maturity on the part of the person you were recruiting. Some people were already sympathizers and were further advancing their understanding. Others were not.

Those that were less advanced, that was a part of my job and work in the Communist Party following my return [from Russia] in 1933, was to acquire these probationary members and immediately put them into classes and to teach them the basic principles of Communism in order to retain them in the Communist Party.

So it varied. Some knew more than others. Others needed more explaining, because they didn't know.

(N. 87) Q. What about Mrs. Maisenberg?

A. She had a good understanding of the program. She had been a sympathizer for a long time, so she said, and that was not the problem. It seems she had a family and other responsibilities.

* * * * *

Q. All right. Subsequent to the time she became a member of the Party, then, would you classify her as a rank and file member?

A. Well, yes, as to position, she was a rank and file member when she entered, as all new members are, although they may have a much better understanding than some folks who have been a member for a total period of years.

Q. That is what you refer to as political maturity?

A. Well, as you mature politically you are advancing in your duties and in your station in the Communist Party, that is, the offices that you may hold. Or you may not hold any, but your progress in understanding is taken into account. You may be assigned here, there and elsewhere because of your political ability. Usually you are always accepted, promoted to or placed in responsible positions because you are politically capable, educated and politically capable of occupying those positions. That is required.

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(N. 88) Q. Now, during the period of your membership, did you ever have occasion to be present where Mrs. Maisenberg discussed or taught the aims and objectives of the Communist Party?

A. Yes, I have.

Q. All right. And would you please state to the court what was said and to the best of your recollection the time and place?

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(N. 89) A. Surely. Where she gave her regular reports from the District Bureau. The Bureau makes decisions, as I explained, and they submit these to the Section Organizer. The Section Organizer gives the report and instructions to the Section membership. When there are decisions, important decisions, changes in policy or line, that procedure is followed.

(N. 90) I recall the occasion when the T. U. L. was abolished, and there were discussions preparatory to the—this was following the abolition—preparatory to the Seventh National Congress of the Communist International, there was an educational campaign going on to acquaint the members, to prepare them for the tactical reorientation. Mrs. Maisenberg gave the report to the Section membership meeting on that occasion from the District Bureau, explaining the certain phases of the tactical reorientation. I don't recall that she used this term.

In effect she said, during the report, among other things, of course, that the essential line of the Communist Party, including its elemental demands, except as conditions may

vary, and the overthrow of the system and government and the establishment of a Soviet America had not changed, but that certain methods and policies had changed because of certain conditions that she explained and other speakers assisted in explaining.

Now, this was during the—prior to the Seventh World Congress, either in the latter part of 1934 or the early part of 1935. Now, there were other such meetings at which Party policy was discussed. In fact, in all committee meetings and functionary meetings you discussed more or less basic policy, at that time, and in membership meetings also. In fact, that is what you discussed at Communist Party meetings—policy, tactics and so on?

(N. 91) This is as near as I can recall as to specific statements, and this statement had to do with a change of policy which was ordering a tactical reorientation as announced in the Seventh World Congress in 1935, and there were specific explanations to the membership as to the new policy.

Q. So that I am positive about this, I am going to ask you a question that may be duplicating. Were there any occasions when you were present with Mrs. Maisenberg when neither you nor Mrs. Maisenberg talked about the aims and objectives, but someone else did?

A. Oh, yes.

Q. And what was said, and on what occasions, to the best of your recollection?

A. I recall on a number of occasions at membership meetings at Ferry Hall, Finnish Hall, when John Smees (?) specifically, and later Weinstone, spoke to Section membership meetings of Section One.

Q. Who were Smees and Weinstone?

A. Smees was District Organizer in 1933, 1932 and 1933, 1933 that I know about, and Weinstone succeeded him in 1934 and was the District Organizer when I left. Now, I know one time—I will not use the word “verbatim” again as to what they said—but they said in effect what I have explained here, the basic policies of the Communist Party, the Communist International, its elemental program, *partial demands leadings towards the ultimate objective which was the overthrow of the government and to breaking it up and*

establishing the dictatorship of the proletariat in the form of the Soviet, and that the orientation—the reorientation, tactful reorientation did not change that basic objective of the Communist Party. This was done all the time, in routine, throughout that period from 1934 through, still going on to some extent when I left, to implement and explain the decisions of the Seventh World Congress.

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[On re-cross examination Nowell testified as follows:]

(N. 97) Q. All right. Now, on re-direct examination by Mr. Hamborsky you were asked a question concerning what Mrs. Mäisenberg said in effect concerning the overthrow of the government, and you recollected a specific occasion when she made a report on the abolition of the T. U. L. and you actually recounted here what substantially she said in 1934 and 1935.

A. Well, I said before—

Q. (Interposing): My question to you is how is it that you are able to remember this particular incident in 1934 and 1935, and still were unable to answer specifically of such occasion when first asked by Mr. Hamborsky?

A. There is no inconsistency apparent in my answer that I don't recall specific statements. I don't know whether I said "occasions" or not. But there were a number of occasions, I said, and I didn't go on and state any specific one. I went on to say that I did not—could not quote verbatim what was said. Now, that was never answered thoroughly as to whether I remember any occasions or not.

Q. But now you do remember this specific occasion in 1934 or 1935?

A. Yes, I do.

Q. In which she gave a specific report and in which she made a specific statement concerning—

(N. 98) A. (Interposing): There was not anything so specific about it. I have said I remember generally.

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(N. 103) Q. (By Mr. Goodman): Mr. Nowell, when did you first remember this occasion after you say it occurred in 1934 or 1935?

A. I have never forgotten the occasion.

Q. Well, when did you have—when was the first time when you mentioned it to anybody connected with the Government?

A. I don't know that I mentioned it at all.

Q. You mean you first remembered it here on the—the first time you say you mentioned it is when you were here on the stand; is that it?

A. I don't recall that I have mentioned any occasion at which she gave such a report at all, on any specific occasion.

Q. Well, all right. Then you first gave the account you have mentioned here on the stand, while you were a witness on the stand? You didn't give an account of that incident prior to taking the stand?

A. I have given no account of any specific incident at any specific time.

Q. I am talking of your testimony as to what you remembered occurred at this meeting in 1934 or 1935, and my question is had you given an account of that to anybody prior to the time you took the stand?

A. I don't recall that I did.

Q. All right.

A. I may have.

Q. You mean you don't remember?

A. I may have, in general,—

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(N. 105) Q. And how many other meetings have you ever attended where Mrs. Maisenberg was present?

A. Oh, I should think two hundred, three hundred.

Q. And you presently remember the report she made at that particular meeting concerning the abolishment of the T. U. L.?

A. Yes. But let me explain this, your Honor. You recall that in my previous testimony, direct examination, I said that I was a member of the Section Committee from 1935 until the end of 1936, and that I was constantly at meetings, Section Bureau meetings or Committee meetings, Section membership meetings, Section functionary meetings, and a number of different meetings, and I haven't all

that specific. I haven't testified to that as yet. I have testified to what in substance was said on an occasion—an occasion, mind you—and not on the occasion.

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Q. And do you remember what Mrs. Maisenberg said, in substance, at each of the other meetings, estimated at several hundred, at which Mrs. Maisenberg attended and at which you were present?

A. She didn't speak at all of them.

Q. All right. How many of those meetings did she speak?

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(N. 106) A. Oh, I wouldn't have kept that count.

Q. A great many, were there not?

A. There were a great many meetings.

Q. Were there a great many at which she spoke?

A. I should not say a great many. She spoke occasionally at those meetings.

Q. Can you tell us, in substance, what she spoke about at each of those meetings when she did speak?

A. In general membership meetings you don't notice so much—

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WITNESS RENO

[Reno testified that he was Organization Secretary for the Michigan District of the Communist Party from 1931-1934 and 1937-38. He identified Petitioner as a Section Organizer in Detroit and a member of the District (State) Committee "from 1933 through 1938" (Tr. 29). While he "guessed" that he had attended "probably in excess of two hundred (closed) meetings" of the Party with Petitioner, he repeatedly emphasized: "I wouldn't be able at this time to reconstruct any specific conversation. I can only give the general substance of what would be discussed with any Section Organizer" (Tr. 30). He was permitted to testify as follows:]

(Tr. 33) A. Those discussions would be principally discussions of a check up on activities in a particular Section, pertaining to the increase or decrease in membership, and discussions as to stimulating recruiting or enlistment of

members in the Communist Party; discussions as to application of the Party's policies in that particular Section; discussions as to distribution of literature, distribution of the Daily Worker, increase of dues payments, regular meetings of the Units, and this would be the general substance of such discussions.

Q. (By Mr. Hamborsky): Any discussion in regards to literature?

A. Well, discussions, with Section Organizers usually—in fact nearly always, would cover the problem of distribution of literature and distribution of the press, because the press and literature are the principal propaganda instruments of the Communist Party. Such a discussion would almost always cover such a—such points.

Q. Well, who was charged with the responsibility for distribution of literature?

A. Literature was usually handled through a Literature Agent. The press was usually handled through a Daily Worker Agent. There was a District Agent; there were Section Agents. However, Section Organizers were responsible for the over-all activity of their Sections, and in this sense, with emphasis on literature, Section Organizers were responsible that this was carried through, too.

• • • • •

(Tr. 34) Q. All right. Now, during the latter period when you were Organizational Secretary, did you have occasion to discuss with Rebecca Maisenberg the distribution of the Daily Worker?

A. I can only say—I can only say this, that I had occasion to discuss with Section Organizers in that period distribution of the Daily Worker, and I wouldn't be in a position to say I had specifically discussed it with her as an individual. But inasmuch as she was a Section Organizer, I probably did.

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(Tr. 35) Q. (By Mr. Hamborsky): Did you discuss these problems with Section Organizers individually, or were all Section Organizers present when this was discussed?

A. There were two—these discussions were two types. There were the meetings of all the Section Organizers at

one time; and on other occasions you would discuss individually with one Section Organizer the problems pertaining to that particular Section.

Q. Well, then, during the period in the testimony you have just given in respect to Rebecca Maisenberg, what kind were you referring to when you testified as you have?

(Tr. 36) A. Well, I was thinking—I testified in this sense: That unquestionably I have had discussions with all the Section Organizers at one time at which she would be present. I am more or less assuming—although in my mind it would be true—that I have had individual discussions with her in the same way, so my testimony means that I have had these discussions with all the Section Organizers at one time and probably with her as an individual, since I had discussions with the individual Section Organizers.

* * * * *

(Tr. 38) The Witness (interposing): Well, I can say this definitely: I have had individual discussions with her, and I think I said this before. There is no question in my mind I have had individual discussions with her through these years and at these meetings these points would have been discussed. But I can't say that I can recall any of the specific substance of the discussions and at this moment I can't recall the hours or the exact spots.

Q. (By Mr. Hamborsky): I have never asked you for the hours or the spots—

A. (Interposing): I see.

Q. (Continuing): —Mr. Reno.

A. Well—

Q. (Interposing): I wanted in substance what was discussed with Rebecca Maisenberg, if you can recall, to the best of your recollection.

The Court: I think he has covered it as much as he feels he can.

Mr. Hamborsky: Well, that is all.

WITNESS STEWART

[Stewart testified that he was a member of the Communist Party from 1931 to 1937. In December of that year he attended a Communist Workers Camp or School near Detroit at which he met the Petitioner who also was attending classes at the school (Tr. 40-43). There were 35-40 in all who attended and lived at the school. "The subjects taken up there were * * * some of the excerpts taken from the *Communist Manifesto*. We studied out of the book *State and Revolution* by Lenin. We studied other books of Fred-eric Engels, Marx, and many pamphlets" (Tr. 45).

Stewart was asked concerning what was taught by the instructors at the school:]

(Tr. 46) A. Yes. I was talking about Al Goetz in particular, what he taught. He was trying to explain that—he was a representative—he was a member of the District Bureau of the Communist Party of the State of Michigan, and he taught in this school, and he was also a member of the—head, at least, of the Unemployed Councils in this District, and he was teaching in this school about the relation of the unemployed to the—in regards to the Communist Party and its activities. Al Goetz also spoke that very—and taught that every issue that the—I don't care how small, even if it is the unemployed issue, it led to the ultimate aim.

(Tr. 47) A. (Continuing): And he taught that, I don't care what issue it was, how small, it led to the ultimate aim.

Q. (By Mr. Hamborsky): Ultimate aim?

A. Yes. *The aim of—the unemployed—any unemployed in relation to the Communist Party teachings generally, which was the question of revolution.* And some of the other ones taught such as—or discussed there, the Second and Third International, in this—

Q. (By Mr. Hamborsky): Who was the instructor?

A. Cross Mischoff. And in regards to the Second and Third International, *the Communist Party, through Cross Mischoff, stated that the Second International was bankrupt and that it could not—it couldn't represent—reach the people any more, and that it had become—the International—that it had—didn't teach revolution any more, and the difference in the Communist Party International, the Third International, was that it did teach and preach and practice revolution* (Tr. 48).

And they also discussed Party—Party structure, * * *

* * *

A. And these councils was the idea that the unit—they were discussing particularly how the Party worked in Russia, how they organized in the Shops Councils, * * *

* * *

And there was other topics taken in regards—that is, current problems of the day, Anthony—Tony Garlack, he talked on—his particular topic was the Trade Unity League, what they called the TUL.

(Tr. 49) The TUL is an organization, something that was supposed to be the—have affiliations with other organizations—I mean it built up to the TUL. That is what I mean.

And they also discussed the great steel strikes of 1919, led by William Z. Foster. We used those lessons.

And throughout all this, whatever they were discussing, whatever subject was taken up, *all amongst the Communists was always understood that everything would be—lead to the revolution, as well as they was always talking about sharpening the class struggle, establishment of the dictatorship of the proletariat, and various slogans of that type, as well as one distinct statement that is made, and made in that school, and made so that all the class could hear it, and at all times, was that capitalism will not die, it has to be killed.*

This is one of the things that they brought out particularly about in regards to the Second International, called the Socialist International, that they had got away from the class struggle and that only the Communist

Party maintained this program of the class struggle revolution.

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(Tr. 50) Q. (By Mr. Hamborsky): Well, now, I believe you mentioned that one of the discussions—I don't recall which one, which one of the leaders that you mentioned, but the discussion in regards to the Communist Party of the United States, and the Communist Party of Poland, Germany and Japan. Can you give us a little more in particular in regards to what was said at that class?

A. Well, the discussion at that time was that the Communist Party of Germany was second to—in size to Russia, the Russian Communist Party, but that the Polish Communist Party was to be—was the strongest and best organized and most active of the Communist Parties. And in the Japanese question, the Japanese Communist Party was small but active, but it didn't have much influence as yet.

(Tr. 51) And in studying America, the American Communist Party, which at that time Earl Browder was head of, Clarence Hathaway, editor, I believe, of the Daily Worker, and things like that—we discussed the mistakes that was made in the steel mill strikes of 1919, and discussed about Samuel Gompers and the Knights of Labor—at least we studied the Knights of Labor, before the American Federation of Labor was formed, and all this was in relation to show they were not the organization to—that the workers could depend upon. They had to be a—that it was—that these organizations at least had not become the organizations of the people any more, of the workers; *that only the Communist Party and the Communists alone could lead the workers to a successful establishment of a revolution and work in the government.*"

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(Tr. 56) Q. What were you taught?

A. We were taught that in the Unemployed Councils, that while feeding the workers; while trying to feed the workers, we were definitely trying—*told that the ultimate aim of the Unemployed Council was the same as the aim*

of the—of all of the Communist organizations of that time, to lead up to the revolution, such as in strikes, supporting strikes, as demonstrations, meeting and getting acquainted with the class struggle.

Q. What were you instructed along the lines of strikes or demonstrations?

A. In strikes, we were instructed, firstly, to support all strikes, especially if they were—that there were issues involved. *Then we were also instructed that from demonstrations, the workers getting the habit and the idea of marching and congregating together, that would be part of the struggle, the organizational struggle to prepare for the revolution.*

Q. Were you instructed why to support all strikes?

* / * * *

(Tr. 57) A. The Communist Party states that the Party must lead all actions of the workers, whether it is the Unemployed, the employed, or whatever—whatever it may be, such as in strikes, for instance, they had an organization that is taking care of the strikers, that is, defending them in the courts, and we were instructed that in case we were arrested what to do and what not to do.

* * * *

(Tr. 58) Q. Now, what were you instructed in regards to this last answer you just gave the—what to do in these strikes?

A. Well, in case of arrest, we weren't supposed to furnish no—we weren't supposed to furnish nothing but the name, and not even that if we could help it, no address—leave all the investigation, as far as you could, suppose to leave it for the police forces and the state, and the city, whatever the case—whoever arrested you. We weren't to cooperate at all.

Q. With whom?

A. With the courts or the Police Department of the City.

* * * *

(Tr. 59) Q. (Interposing): Did they tell you why you were not supposed to—why you were supposed to fight all the way through?

A. As a part of the class struggle, and to get militant workers, supposed to be—they are supposed to be militant, when you didn't—what they call weaken before the Police Departments.

Q. Well, did they instruct you why you should be militant?

A. Yes, they did.

Q. What did they instruct you along those lines?

A. *We were instructed that to be militant was to be the sign of a good Communist, firstly, and that we would also deter any investigation of anything that might be put out.*

Q. Well, were you instructed at the school the aims and objectives of the Communist Party?

* * * * *

(Tr. 60) A. *The aim is the—is the establishment of the workers in a peasant government.*

Q. Where?

A. *Revolution. In the United States.*

Q. How?

A. *By the overthrow of the American government by arms.*

Q. And did they teach, in this school, the aims and objectives in relationship to the various subjects that you have mentioned?

A. Yes.

Q. In other words, I believe, among others, you have got the unemployed situations, strikes, strike strategy, and demonstrations.

A. Yes.

Q. Now, I don't believe I asked you what you were instructed along the line of demonstrations. What were you instructed?

* * * * *

(Tr. 61) A. * * * In a demonstration, you listened to the speakers, and the speakers, whatever they happened to be talking about. But then along with that you have certain procedures set up for a demonstration, which at that time was to protect speakers, to keep them from the Police Department, protect them from other groups, or—

* * * * *

Q. Thank you. Now, in regards to the aims and objectives that you were taught in this school, what were you taught in relation to the various Communist parties you have mentioned, the Communist Party of Germany, Poland, Japan and the United States? Were you taught the relationship of those parties?

(Tr. 62) A. Yes.

Q. What were you taught was the relationship?

A. We were taught in this school that all Communist Parties were affiliated with the Communist International, which is the Third International, and that we in America—the American Communist Party was only a section of the Communist International of the general Communist Party, such as some of them I have named, and many others, French, and all the Communist Parties.

Q. Well, did they instruct you why you studied these various Communist Parties?

A. Yes.

Q. And what did they instruct you along those lines?

A. They instructed along these lines for a while, you were studying these parties to learn—or to draw a lesson and comparison of one to the other. If one party was considered—it handled a certain issue properly—what they considered properly—this particular party that did this was used to compare with the ones that did not.

Q. Well, what ones were used to compare, let's say, with the Communist Party of the United States?

A. Well, the Polish Communist Party was considered the best of all—at that particular time—of all the Communist Parties, where it was—it was strong, it was active, and well, that they declared it was just a good live Communist Party. When in Germany the Party was larger and had got a lot of votes just prior to this, and—but yet still it wasn't held as the best of the Communist Parties.

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(Tr. 65) Q. Did you discuss the one in Russia?

A. Yes.

Q. All right. And what did you discuss in relation to the one in Russia and the United States?

A. Well, the Communist Party in Russia was the largest Party of the two. It had—the largest Party of all. And it had gained or successfully conducted a revolution, and we studied the activities of the Russian Communist Party, as much as possible, to—in comparison to other Communist Parties, as the American Communist Party as well as the German Communist Party, and we—the lessons of the Russian revolution was taken in. I think we get that in the book of State and Revolution.

Q. Now, what were you instructed in regards to revolution?

A. That the revolution was, firstly—the time it happened, it would come in after the—after the 1917 in Russia, and that the Russian revolution had throwed off its—supposed to be the Czar, its former government it had, and that the Russian revolution had led the way for all Communist Parties—the Communist Party of Russia had led the way for all Communist Parties to follow throughout the world.

(Tr. 66) Q. Well, were you instructed at this camp why you studied the Russian revolution?

A. We was to further—to clarify the issues and to make a better Communist—

Q. (Interposing): Were you instructed—

A. (Continuing): —make better Communists out of—Communists and the Communist Party in America.

Q. Now, it has been a long time since I asked you this question, and I want to make sure that—have you listed the books that were the subject of your study at this Workers' Camp?

A. No, I haven't made any—

Q. (Interposing): Would you list them, please? What books?

A. Well—

Q. (Interposing): What books were you taught out of at this camp?

A. We were taught out of the excerpts from the Communist Manifesta. We were taught out of the book of State and Revolution. And, let me see. Then there was

pamphlets on the—that we discussed, that we studied out of the—the Central Committee had issued, I think, on the great steel strikes of 1919. I don't remember all of them. There is—

* * * * *

(Tr. 67) Q. (By Mr. Hamborsky): I believe, Mr. Stewart, when you discussed the composition of this particular class, you stated something about thirty-five in the school. Did that include instructors and students, or was that only students?

(Tr. 68) A. Well, that would be students and student leaders.

Q. And Rebecca Maisenberg was one of those in that particular class?

A. Yes.

* * * * *

(Tr. 71) Q. And in your capacity there in Section One, did you have occasion to work with Rebecca Maisenberg in the Communist Party?

A. Yes.

Q. And what did that consist of?

A. Well, just ordinary Communist activity, meetings and distribution of literature.

Q. What type of literature?

A. Well, the Daily Worker, and many pamphlets that was always being passed around, and as well as some Party literature which I can't name them right now.

* * * * *

(Tr. 72) Q. Let me ask you this: Did you ever have discussions, any discussions with Rebecca Maisenberg in regards to the Communist Party during your membership in the Communist Party?

A. No, I never had direct with her myself.

Q. Were you ever present at a Section meeting when she discussed Party policies?

A. Yes.

Q. And what was said, and when and where, to the best of your recollection?

A. I don't remember exactly what was said, with the exception that these—these Section meetings problems

was always taken up of Units, of the problems of that particular Section which later on the Section was divided into a sub-section. I think it was Oakland Section, it was called. And just general Communist Party activities that would be discussed there.

Q. Well, can you state with more certainty what Mrs. Maisenberg said on any occasion?

* * *

(Tr. 73) A. I am trying to remember. I can't remember any definite thing right now.

* * *

(Tr. 79) Q. (By Mr. Hamborsky): In substance, what she said during that particular time when you and she were members of Section One, and she was the Section Organizer?

A. Not any given occasion.

Q. I don't—no, not any given occasion. I didn't ask that ques- (Tr. 80) tion.

A. Well, I have—I have heard her discuss the Communist Party and the—

Q. (Interposing): Well, what did she say about it?

A. Well,—the discussing the Communist Party, it would be discussing about the Scotsboro issue, was one of the issues we discussed at that particular time. And on the election campaigns, things like that. But I don't remember just exactly what she discussed at any particular time.

* * *

Q. Did she ever ask you to bring a Communist Party member into the Party?

A. All Communists ask that. She did, too.

Q. Did she ever discuss why it was important to bring Communist Party members into the Party?

* * *

(Tr. 81) A. That—to get Communist Party members into the Party, to make the Party larger, and that the Party was the best organization for the people, to be a member of.

(Tr. 83) Q. (By Mr. Hamborsky): Will you answer why she said it was necessary to bring in members and build up the Communist Party? That, in substance, was the last question?

A. What was that? Shall I answer it again?

* * * * *

Q. Would you answer it?

A. To make the Party a larger Party, increase members, and that the Communist Party was the best organization or Party to be a member of. That's what I said before.

(Tr. 84) Q. Well, that is the point when I asked why. Did she say why the Communist Party was the best Party to be a member of?

A. Well, the—

Q. (Interposing): Did she say why?

A. Yes.

Q. All right. What did she say, then?

A. That the Communist Party is the Party of the working class, and only the working class could be a member of the Communist Party, and that the Communist Party was the Party for the working people.

* * * * *

(Tr. 85) Q. (By Mr. Hamborsky): Well, did she say why the Communist Party and the workers should belong to the Communist Party? Did she say why?

* * * * *

(Tr. 86) A. *She said that for a successful—to join so that the Party would be successful in creating a workers' and farmers' government in the United States.*

* * * * *

(Tr. 87) Q. (By Mr. Hamborsky): She said nothing more, then. Is that correct?

The Court: That is what he said. It isn't my fault if these witnesses don't always answer the way you expect them to.

Q. (By Mr. Hamborsky): Did she, during the period she was Section Organizer, discuss with the Section in

any of these Section meetings the organizational problems of the Section?

A. Yes.

Q. What did she discuss along those lines? What did she say?

A. Well, I don't remember exactly, because it was discussed so many times. I mean it was discussed at meeting after meeting, we discussed it, so many times, different times. I don't remember exactly what she said.

* * * * *

(Tr. 89) Q. Mr. Stewart, before lunch I think we ended about the point of the Org letter. Am I right or not? Anyway, would you explain what the Org letter was during that period of time, 1934 through '37?

A. The Org letter was a set of directives that was sent to the Sections and the Sections to the Units. In that Org letter it took—it was directives on whatever the Communist Party was discussing at that particular time, what they was working on. And it was the Communist Party that sent this to each Unit of the District Bureau. It comes from the District Bureau in the City of Detroit, and in this it had on it, I would say, for instance, different literature, the distribution of literature, the necessity of distributing literature, recruiting drives for memberships, oft-times, as well as the education of the Unit and the membership, along with—sometimes about directives for holding mass meetings, and where and when and about what, and demonstrations and so forth. That was what was in the directive—that was in the Org letter as a rule.

(Tr. 90) Q. All right. And did you hear Rebecca Maisenberg when she was Section Organizer discuss the Org letter in your presence?

A. Yes.

Q. And how many occasions would you say?

A. Too many to name. I don't know exactly.

* * * * *

(Tr. 92) Q. (By Mr. Hamborsky): I asked this question, that during that period of years you have named the location, at Ferry Hall, and you said from 1934 to '37 on many occasions. I want to know what, in substance, you heard Mrs.—or Rebecca Maisenberg say.

Mr. Goodman: I object to that. What he wants this witness to say is what he heard her say many times over a period of three years. How could that be otherwise than a conclusion?

The Court: Oh, no. If I kept hearing you say, for three years, "Let's shoot the President", I could say that, couldn't I?

.

(Tr. 93) Q. (By Mr. Hamborsky): The question was, over this period of time of three years, at the place where you stated, can you give me the substance of what was said by Rebecca Maisenberg?

A. Yes. In this—well, what she was saying was in regards to saying—for instance, in regards to recruiting she would bring out that it was necessary to recruit members, and also it was necessary to—

Q. (Interposing): Members where?

A. Recruit members into the Communist Party. And also to—the necessity of distributing literature, and reading of it, and distributing of it, and getting other people interested in the literature, and as well as the organization, and was carrying out the directives of the Org letter in general.

.

(Tr. 95) Q. (By Mr. Hamborsky): Did she, during this period that you are testifying to now—now, you have stated that, in substance, she said we need a bigger Communist Party. Did she ever say why? Did she ever give a reason?

A. Yes.

Q. At these meetings?

A. Yes.

Q. And what did she give?

A. *To organize the Communist Party along the lines that would eventually lead to revolution.*

.

(Tr. 96) Q. (By Mr. Hamborsky): Well, what, if anything, was said by Rebecca Maisenberg concerning distribution of the Communist Party literature?

(Tr. 97) A. Well, the necessity of the getting it out, and getting it in the hands of the people, and into the hands of the membership, the general C P members, Communist Party members, and that it was necessary to get it out because that the—the Communist Party was the Party of the working class and it was going to read the literature—*get the people to read the literature, we would eventually have a revolution.*

[On Cross-Examination Stewart admitted that, while he was taught "Marxism-Leninism" from "many books" at the 1931 Workers School (Tr. 101), (these books are in evidence as Government Exhibit No. 3). (See *supra*, p. 7, note 4) and that these books "are the basic writings of Marxism-Leninism" (Tr. 109), he could not "remember anything" he studied out of those books "right now" and could not remember "the names of the books any more" (Tr. 103-109). He was then asked:]

Q. But you have testified—

A. (Interposing): At this time—

Q. (Continuing) —this morning as to what you remember was said in substance at some of those classes?

A. That's right.

Q. By particular persons. Didn't you?

A. That's right, yes.

Q. And you say you can presently remember those things that were said?

A. That's right.

Q. And yet you cannot remember whether you were taught these basic documents and books of Marxism-Leninism?

(Tr. 110) A. Not by name.

• • • • •

Q. How many times have you testified in deportation cases on behalf of the Immigration and Naturalization Department?

A. About ten—probably ten times.

Q. How many times have you testified in denaturalization cases?

(Tr. 112) A. Twice.

* * * *

(Tr. 113) Q. You got paid from the Immigration and Naturalization Department?

A. Yes.

* * * *

Q. What have you been paid?

A. A day, \$4.00.

Q. \$4.00?

The Court: How much?

A. \$4.00.

(Tr. 114) Q. (By Mr. Goodman): \$4.00 a day. What have you been paid in other cases?

A. I have been paid as high as \$25.

* * * *

Q. In other words, the lowest you have got is \$4.00 and the highest you have got is \$25?

A. That's right.

* * * *

Re-direct Examination

(Tr. 115) By Mr. Hamborsky:

Q. Mr. Stewart, what was your understanding of the aims and objectives of the Communist Party at the time that you were a member thereof?

Mr. Goodman: I object to that. I didn't ask this witness anything about his understanding. I asked what he was taught in the school.

* * * *

(Tr. 117) Q. (By Mr. Hamborsky, interposing): Well, what was your understanding as to what you were taught of the aims and objectives of the Communist Party?

* * * *

(Tr. 118) A. I was taught by direct word from instructors at the school, and along with what I read myself, that the ultimate aim of the Communist Party was for organiz-

ing and to overthrow the government of the United States Government. That is all Communists' understanding.

• • • • •

(Tr. 120) Q. (By Mr. Hamborsky, interposing): Were you taught how they were going to attain these aims and objectives?

A. Yes.

Q. What were you taught?

A. *I was taught that through organizing of the Communist Party—of the—into the Communist Party that,—and studying of books and literature and like that, that they would organize for the eventual overthrow of the government.*

• • • • •

(Tr. 121) Q. (By Mr. Hamborsky): Did you have a course of revolution?

A. Yes.

Q. And did you study the Bolshevik revolution? Isn't that what you testified to?

A. Yes.

• • • • •

(Tr. 122) Q. (By Mr. Hamborsky): And what were you taught at this Workers' Camp in regards to the revolution?

• • • • •

A. I was taught the—in the Second International, the Second International had been bankrupt and that it no longer represented the people, and it didn't represent the best interests of the people. That the *Third International, which was the Communist International, taught revolution and not to—by armed violence, or violence—at least violence.*

(Tr. 123) The Court: And not by armed violence, did he say?

A. By armed violence, by—

• • • • •

(Tr. 124) Q. Were you taught in the School, the Workers' Camp, why you studied the Bolshevik revolution in Russia?

A. I was taught the Bolshevik revolution to—from Russia in comparison to the Communist parties throughout the country—throughout the world, all Communist Parties. *And we were taught it for the purpose of showing the—how the Bolshevik revolution come about, how it was made possible. And then it was used for examples to—I mean, it was used as an example to liken the American Communist Party to the Bolshevik Communist Party in Russia, which was the overthrow of Russia.*

Q. It was likened as to it, is that what you said?

A. In comparison—used it for comparison purposes, to find the shortcomings in the American Communist Party, and use it as a lesson for the—*use the Bolshevik Communist Party as a lesson to be applied to the American Communist Party.*

Q. What was the lesson?

(Tr. 127) A. *The lesson—the lesson that the reason for studying the Bolshevik Communist Party in relation to the American Communist Party was to show that the Bolshevik—how the Bolshevik Communist Party activated itself, and how it operated to the establishment of the—the overthrow and establishment of the workers' and farmers' government in Russia, and this was did because—in relation to the American Communist Party to show the American Communists how to organize their Party or follow the example of the Bolshevik Communist Party of Russia, and to take steps to learn to organize—to take steps to the eventual establishment of—and overthrow of the government here and the establishment of another one, of the Communist government that would be here.*

(Tr. 140) BERENIECE A. BALDWIN, a witness called on behalf of the Government, having been first duly sworn by the Clerk, testified as follows:

Direct Examination

• • • • •
(Tr. 141) Q. (By Mr. Hamborsky): Would you please state for the court the circumstances under which you joined the Communist Party?

A. Yes. After several conferences with agents of the Federal Bureau of Investigation, I joined the Party in 1943.

• • • • •
(Tr. 141) Mr. Goodman (interposing): Just before we proceed, your Honor, I want to make an objection at this time. Since it is evident from the witness's testimony she was a member of the Communist Party from 1943 to 1952—five—that is, the beginning of her membership was five years subsequent to the naturalization of the defendant. I want to object—five years. I think the naturalization was 1938, wasn't it?

• • • • •
(Tr. 145) Q. And during your period of time in the Communist Party, did you have occasion to meet Rebecca Maisenberg?

A. I did.

Q. Do you see her in the court room today?

A. Yes, I do.

Q. And would you state when and the circumstances under which you met Rebecca Maisenberg?

A. Yes. I had seen her at various meetings prior to 1944, and as I recall she attended the State Convention in the fall of 1944. However, in the fall of 1944 I was sent to her Club particularly to attend a meeting there.

• • • • •
(Tr. 147) Q. And during this particular time, do you know whether or not Rebecca Maisenberg held any positions in the Communist Party?

A. Yes, she did. She held position as Club Chairman or Club President of the Oakland Club.

Q. The what club?

A. Of the West Side Club. And that was in 1944. And later on she became the Literature Director of the Book Store, which is the Communist Party Book Store.

Q. Literature Director for what area?

A. For District Seven of Detroit, State of Michigan.

Q. Was she on the State Board of the Communist Party during any of your period of membership?

A. Yes, as I recall, she was.

Q. And what would be, for example, the duties of a Literature Director for District Number Seven?

A. To see that literature, Communist Party literature, propaganda, would be gotten into the hands of the various Club members, through Sections, or otherwise.

Q. And what type of literature would this be?

(Tr. 148) A. *Well, it included all of the Marxist-Leninist, Engels classics, the revolutionary books, and other periodicals.*

Q. And periodicals. What type of periodicals, for example?

A. Such as The Communist, which was later known as Political Affairs. Masses and Main Stream. The Worker. The Daily Worker. The Michigan Herald. And others.

* * * * *

(Tr. 148) Q. Well, let me ask you this: What, then, would be the duties or responsibilities of the Literature Director of the State of Michigan, in regards to education?

* * * * *

(Tr. 150) The Court: You may have the last question.
Mr. Hamborsky: Yes.

Q. (By Mr. Hamborsky): Can you answer that?

A. Yes, I certainly can. The Literature Department of the Communist Party was the mainstay, *because it was through the educational director of the state that the people would be educated in the revolutionary movement.*

Q. And then your testimony is that Rebecca Maisenberg was in charge of the distribution of that literature for the State of Michigan?

A. Yes, the propaganda literature, yes.
Mr. Hamborsky: That is all.

.

(Tr. 177) LEO SYRAKIS, a witness called on behalf of the Government, having been first duly sworn by the Clerk, testified as follows:

Direct Examination

By Mr. Hamborsky:

Q. What is your name?

A. Leo Syrakis.

.

(Tr. 178) Q. Now, during the period of your membership in the Communist Party, what position or positions did you hold in the Communist Party?

A. I was the Secretary of the Greek Political Bureau.

.

(Tr. 179) Q. And now do you know Rebecca Maisenberg?

A. Yes, sir.

Q. And do you see her in the court room today?

A. Yes, sitting next to the attorney.

Q. And when did you first meet her?

A. I met her at Finnish Hall the first part of 1935.

Q. What kind of a—what was the occasion of the meeting?

A. It was a general membership meeting which Earl Browder spoke.

.

(Tr. 179) Q. Now, at this particular meeting, where did you see Rebecca Maisenberg?

(Tr. 180) A. I saw her at the meeting. She was sitting with the functionaries, was sitting in—

Q. (Interposing): Where would that be? Where were the functionaries sitting?

A. In the presidium, in front of the—

Q. (Interposing): And how many were sitting up there in the front?

A. Oh, about six or seven.

Q. You say the speaker was Earl Browder?

A. Yes, sir.

Q. What did he speak about on that occasion?

A. He was explaining why the Soviet Union joined the League of Nations.

* * * * *

(Tr. 181) Q. Now, on those occasions that you have testified to, that were closed meetings that you attended with Rebecca Maisenberg, did she on any occasion—on any occasion, any of those meetings, make any statements or say anything in regards to the Communist Party?

A. Yes. Once when Raymond W. _____ ran for governor of the State of Michigan on the Communist Party ticket, she was explaining the role which the Party will play, if we put some Party members in the various offices of the State of Michigan.

Q. And what did she say?

A. *She say it was for our advantage to show our strength, how much our strength—how much strength we had if we put candidates for the offices of the State of Michigan of the Communist Party, and to our advantage if we show the strength, we would need that strength when the time comes to overthrow the government.*

Q. Now, on any other occasion did she have—did you have occasion to be present when she discussed anything in regards to the Communist Party?

A. Yes. When at the Party school, I heard her spoke with other Party members.

* * * * *

(Tr. 183) A. Yes. They were explaining the role which the Communist Party would play and the policy of the Communist Party, and she was explaining the advantage of our Party in the politics of the state.

Q. (By Mr. Hamborsky): Did she say anything further along those lines?

A. *Yes. That we have to be strong and we have to utilize our power among the working classes—among the working classes, so when the time comes we will have them as our allies for the ultimate aim.*

Q. Well, now, where was this school?

A. At Finnish Hall, on McGraw and Fourteenth.

Q. And who ran the school?

A. The Communist Party.

Q. And do you know what Rebecca Maisenberg's connection with this school was?

A. She was helping to keep the records of the school.

Q. Do you know in what capacity?

A. No, she just was helping there.

Q. Did you attend the school?

(Tr. 184) A. Yes, sir.

Q. And when was this?

A. That was in the first part of 1935.

Q. And what were you taught in the school?

A. Strike, the principle of the strike, the principles of the Communist Party, organization of the Party, and the United Front.

.

(Tr. 185) Q. Now, on these occasions when you attended the school, was Mrs. Maisenberg there?

A. She was at the beginning, before classes start. She didn't attend the classes.

Q. She did not attend the classes?

A. No.

.

(Tr. 185) Q. Well, Mr. Syrakis, on how many occasions would you say you attended closed Communist Party meetings with Rebecca Maisenberg?

A. Well, several meetings.

Q. And on the occasions when you heard her discuss various things about the Communist Party, can you state with any more particularity than you have up until now, statements that she made?

A. When the—when Mr. Maurice Sugar was running for Councilman and then Raymond was the president, Raymond spoke for—

.

(Tr. 186) Q. (By Mr. Hamborsky, interposing): Mrs. Maisenberg was present?

A. Mrs. Maisenberg was present.

Q. All right.

A. And they were promoting Mr. Raymond for Governor for the next year, to run for Governor, *and she spoke and said why we had to have Mr. Sugar to run for Councilman, and at the same time we can promote our Party member for the Governorship of the state, so to show—to show our strength and have—at the same time have the working class allied with us, so when the ultimate—when the time comes to overthrow the government by force we know what to do, and we have the backing of the working class at the same time.*

Q. And those were statements that Rebecca Maisenberg made?

A. Yes.

Mr. Hamborsky: That is all.

Cross Examination

By Mr. Goodman:

Q. Mr. Syrakis, how long were you active in the Communist Party?

(Tr. 187) A. Oh, about ten or eleven months.

Q. And you were expelled from the Communist Party, were you not?

A. Yes, sir.

Q. And you were expelled in connection with a charge involving your personal moral conduct, were you not?

(Tr. 188) Q. (By Mr. Goodman): That was true, wasn't it, Mr. Syrakis?

A. The charge, yes.

Q. And since 1935, after your expulsion, you have never been a member of the Communist Party again, have you?

A. No.

(Tr. 188) Q. And when were you first approached by the Immigration and Naturalization Service to testify in matters involving your membership in the Communist Party, or to give information on that?

A. That was the last part of 1949.

Q. It was after you become a citizen?

A. Yes, about five or six months, five.

Q. Now, at the time you became a citizen you did not state to the Examiner or to the government during the course of your proceeding that you had been a member of the Communist Party, did you?

.

(Tr. 189) Q. (By Mr. Goodman): Did you get the question?

A. No. Ask me again.

Mr. Goodman: Will you read it, please?

(Last question read by the Reporter.)

.

(Tr. 190) A. I didn't tell them.

Q. All right. Now, since you were approached by the Naturalization Department several months after you became a citizen, you have testified in a number of deportation and denaturalization cases, have you not?

A. Yes, sir.

Q. And how many such cases have you testified in?

A. Well, eight or nine.

Q. You have been advised, have you not, by the Immigration and Naturalization Service, that your citizenship status may be subject to attack by—in a denaturalization proceeding?

A. No.

Q. They never told you that?

A. No.

.

(Tr. 193) Q. Do you know that the councilmanic election takes—took place in the latter part of the year?

A. I do.

Q. You still say that there was a councilmanic campaign going on at that time, and there was some support being asked at that time for it?

A. It wasn't—it wasn't the way the Communists worked, though. They start about two or three years before when they want to promote something.

.

A. They don't believe themselves they are going to elect anybody. They want to show their strength, how many support they had.

* * * * *

(Tr. 196) Q. Now, Mr. Syrakis, when was the first time, after this meeting in 1935, that you had any occasion to mention what had occurred or was said at that meeting, afterwards? When was the first time you mentioned it to anybody?

A. You mean—I didn't get the question.

Q. Well, since 1935, when was the first time that you ever told anybody about that meeting where you say Mrs. Maisenberg was present, and what she spoke about? When was the first time?

* * * * *

A. Oh, couple of weeks ago.

* * * * *

Q. And it is your testimony that about twenty years after this meeting took place you were able to tell what you have told here concerning what Mrs. Maisenberg was supposed to have said at that meeting?

A. Yes.

* * * * *

(Tr. 198) Q. Now, you have testified that at one meeting the defendant was explaining the policies of the Communist Party in Michigan and she made certain statements. You remember that testimony?

A. Yes, sir.

Q. All right. Now, where did that take place?

A. Took place at the Finnish Hall.

Q. What was the occasion?

A. Before the start—the school started they were discussing the policies of the Communist Party and they were discussing with another instructor there, who was helping—he was helping the material of the school. McGill. They were discussing it.

Q. How many people spoke at that meeting?

A. Four of them.

Q. How many?

A. Three or four.

Q. Three or four. How long did Mrs. Maisenberg speak?

A. Not very long, ten or fifteen minutes.

Q. Ten or fifteen minutes. What is it she said?

A. She was explaining the role of the Communist Party, the policy of the Communist Party.

Q. Yes. What is it she said? Go ahead.

A. She said how the Communist Party supposed to work in order to achieve their aims of the Communist Party.

Q. Did she say anything else that you can remember?

A. *She says how to work with the other working class people in order to have them as friends and allies when the time comes we going to need them to overthrow the government by force.*

Q. What else did she say?

A. That is all.

WITNESS PAUL ELDER

(Tr. 205) Q. And when and where did you join?

A. I joined the Party in 1936, at what is known as Fin Hall.

(Tr. 208) Q. All right. Now, Mr. Elder, when you first met Rebecca Maisenberg, what year was that?

A. In 1936.

Q. All right. And after that, from 1936 on until you left the Communist Party, did you ever attend any closed meetings of the Communist Party with Rebecca Maisenberg?

A. Yes, I did.

(Tr. 208) Q. All right. Then you stated you were—or strike that. Do you know, during your period of membership in the Communist Party what positions, if any, Rebecca Maisenberg held?

A. Most of her work was in a general nature. The only one specific job I know she had was looking after the distribution of the Daily Worker on the East Side.

(Tr. 209) Q. Well, when you were Literature Director of the Twelfth Street Section of the Communist Party, did you have occasion to discuss literature or problems of the Communist Party with Rebecca Maisenberg?

A. No, I do not believe I did.

.

(Tr. 210) Q. All right. And what did she say at Yeman's Hall? At the Yeman's Hall meeting?

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(Tr. 210) A. The best of my recollection, it was for the necessity of devoting greater efforts to recruit members for the Party, and the luck of her group and the way and manner in which this work was carried on.

.

(Tr. 213) Q. Now, when you and Rebecca Maisenberg were present, what type of a meeting was it in which this literature situation was discussed?

A. It was a closed Communist Party meeting.

Q. And who spoke and what was discussed?

A. Well, one of the meetings—the first one I recall was by William Weinstone. The second—

Q. (Interposing): Let me ask you this: Who was William Weinstone?

A. In 1936 he was called—his title was D. O. or District Organizer.

Q. All right. And what did he say, then, in substance? In substance, to the best of your recollection, what was said?

A. In substance—

Mr. Goodman: Can I have the year of this meeting?

Mr. Hamborsky: '36, he said.

Q. (By Mr. Hamborsky): Isn't that what you just said?

A. That is correct. In substance the meeting was for the opportunity presented to the members of the Communist Party to recruit new members because of the organization going on in the auto plants, the great number of workers who at that time were organizing, and seemingly, as he termed it, were ripe and ready because of the

feeling about organizing, and they should join because they should—it should be brought to them that the Communist Party was the vehicle for them to work in. That was part of it.

The other had to do with the necessity of a greater sale and distribution of the Party organ, the Daily Worker, and other types of literature put out by the Party.

.

(Tr. 215) Q. And what did—did Weinstone at that particular meeting outline any plan or program how this should be done or how to push it or whatever he was saying at that time?

A. Well, yes, he did.

Q. Well, look. Give me the whole substance of the conversation in regard to distribution of the literature.

A. If a person belonged to the Party and knew anything about Marxism-Leninism, it was understood that if the literature of the Party was not given to other people, to everybody in the country, if the Party's program was not known, that the growth of the Party would not be fast enough or strong enough to make more recruits and build up a strong Communist Party. So the gist of his talk was that at that time, at that particular (Tr. 216) time, when the workers were sitting down in the Buick factory in Flint, when the workers were organizing to make their demands known for recognition, why, that was the time at which the Party should utilize the opportunity to make themselves known in every way and gain friends, and in the question of literature, why, it was very important to get the Party material to as many people as possible.

.

(Tr. 219) Q. What as the last in point of time or years that you attended a closed meeting of the Communist Party with Rebecca Maisenberg?

A. Late—the last was in 1942, at the Jericho Temple on Joy (Tr. 220) Road, at a closed District meeting.

Q. And would you like to state how many closed meetings of the Communist Party you attended with Rebecca

Maisenberg during your period of membership from 1936 to 1942?

A. I would state the number is four, approximately. Four I am sure of.

Q. And on how many other occasions did you see Rebecca Maisenberg during that period of time?

* * * * *

(Tr. 220) A. Well, I would say five more Communist meetings, but they were rather more open meetings. That is open meetings at which non-Communist party people would come, sympathizers. They were meetings for the purpose of acquainting these people with the role of the Party and what the Communists are doing. It was done with the intention of recruiting these people.

* * * * *

Mr. Hamborsky: That is the Government's case, your Honor.

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THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 76

REBECCA MAISENBERG,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONER

ERNEST GOODMAN
GEORGE W. CROCKETT, JR.
Attorneys for Petitioner
3220 Cadillac Tower
Detroit 26, Michigan

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<i>Nationality Act of 1940, Tit. 8, U.S.C. Sec. 738 (a)</i>	11
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 76

REBECCA MAISENBERG,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONER

This is a denaturalization proceeding—the companion case to *Nowak v. United States*, October Term, 1957, No. 72. A single opinion for both cases was rendered on November 26, 1956 by the Court of Appeals and is reported at 238 F.2d 282.¹

¹ This opinion is included in the printed Appendix in the *Nowak* case (App., p. 145).

The opinion of the District Court is unreported but is included in the Appendix to this brief (App. p. 41).²

Jurisdiction

The jurisdiction of this Court is invoked pursuant to the provisions of 28 U.S.C. Sec. 1254. Petition for writ of certiorari was granted on April 1, 1957.

Questions Presented

All of the questions before the Court in *Nowak*—with the exception of the application of *Jencks v. United States* (*Nowak* Brief, p. 94)—are presented here. Additionally, the Court is requested here to construe the meaning and the constitutional application to Petitioner of the denaturalization section of the Immigration and Nationality Act of 1952 (66 Stat. 166, 8 U.S.C.A. 1101, *et seq.*).

Statutes Involved

All of the statutes set forth in *Nowak* are involved here. Additionally, there is involved here the denaturalization provisions of the Immigration and Nationality Act of 1952 (66 Stat. 166, 8 U.S.C.A. 1101, 1451(a)):

“Sec. 340. (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and

² “App. — ” refers to the printed Appendix filed with this brief.

canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively."

* * * * *

"(i) The provisions of this section shall apply not only to any naturalization granted and to certificates of naturalization and citizenship issued under the provisions of this title, but to any naturalization heretofore granted by any court, and to all certificates of naturalization and citizenship which may have been issued heretofore by any court or by the Commissioner based upon naturalization granted by any court, or by a designated representative of the Commissioner under the provisions of section 702 of the Nationality Act of 1940, as amended, or by such designated representative under any other act."

Statement

Petitioner was born in Russia in 1901 and came to this country in 1912 with her mother, sister and two brothers to reside with their father in New York City. In 1917 she married and in 1926 she and her husband moved to Detroit where they have lived ever since. Petitioner has no criminal record.

Petitioner was naturalized by the Federal District Court at Detroit on January 24, 1938.

THE PLEADINGS

This denaturalization proceeding was instituted in March, 1952 pursuant to the Immigration and Nationality Act of 1952. The Amended Complaint (App. p. 21) charges, in the language of that Act, that Petitioner's naturalization was procured "*by concealment of material facts and by willful misrepresentation,*" in that the following statements made by her in the course of her naturalization in 1937-1938 were knowingly false:

"(a) That she fully believed in the principles and form of government of the United States; and that she did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country. This statement was made in Preliminary Form for Petition for Naturalization filed with the District Director Immigration and Naturalization Service, Detroit, Michigan, on or about June 30, 1937." (App. p. 38, Questions 22, 23 and 28.)

"(b) That she was not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government; that she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and that she would renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty of which she was a subject, and particularly to the Union of Soviet Socialist Republic. This statement was made in her Petition for Naturalization;" (See App. p. 39, paragraph 7.)

"(c) That she would support and defend the Constitution and laws of the United States of America against all enemies foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation without any mental reservation or purpose of evasion. This statement was made in open court in Oath of Allegiance, more fully set out in paragraph 5;"

The Complaint alleged that the above statements were false because the Petitioner was a member of the Communist Party of the United States from 1930 to the date of her naturalization in 1938 and she concealed this fact; and that during this time the Communist Party was an organization which "advocated or taught the overthrow by force and violence of the government of the United States," and that Petitioner "was familiar with and approved of the above teachings of the Communist Party."

Attached to and made a part of the Complaint is the affidavit of one Reuben Speiser (App. p. 26), who appears to be the same affiant and the affidavit is essentially the same in form as the affidavit attached to the *Nowak* Complaint. (*Nowak* Brief, App. p. 121.)

Petitioner moved to strike certain portions of the Complaint and the Affidavit (App. p. 29) as "irrelevant, contradictory . . . highly prejudicial and not capable of proper cross-examination;" or in the alternative to require more specific information concerning the "official records" referred to in the affidavit and the production of such as are referred to in the affidavit. This motion was denied.

Petitioner's Answer (App. p. 32) admitted execution and filing of the Petition for Naturalization, the taking of the oath and the grant of naturalization, but placed in issue all of the other material allegations of the Complaint.

The Answer also challenged the legal sufficiency of the affidavit of "good cause" to confer jurisdiction upon the Court. Additionally, it moved for dismissal of the Complaint on the ground that Section 340 (a) of the Immigration and Nationality Act (8 U.S.C.A. 1451(a)), under which this action is brought, on its face and as applied to Petitioner, is unconstitutional under the First and Fifth Amendments to the Federal Constitution.

THE EVIDENCE

The Government's theory at the trial was set forth in counsel's opening and closing remarks (Tr. Vol. I, pp. 6, 9-11; Vol. III, pp. 15, 23):³

Mr. Hamborsky: All right. We claim, first of all that she concealed a material fact. For example, on Question 28 of Government's proposed Exhibit I she answered "No" to the following question: "Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?" She answered "No."

We contend that she was a member of the Communist Party at the time that she answered that question "No"; that she knew what the Communist Party stood for; and that the Communist Party taught and advocated overthrow of this government by force and violence. Consequently, she concealed a material fact.

The Court: You have to show that she knew it.

Mr. Hamborsky: Well—

³ "Tr. —" refers to the typewritten transcript filed with this Court. It is in three volumes. Vol. I and II contain all the testimony. Vol. III contains the colloquy at the end of the trial. Since the pages are not numbered consecutively, in this brief we will refer to the volume, followed by the page number therein.

The Court (Interposing): Mere membership in it wouldn't be enough?

Mr. Hamborsky: I think you are right there, although as I say, the courts have not ruled on that particular issue (Tr. Vol. I, p. 6).

* * * * *

Mr. Hamborsky: The Government's position in regard to wilful misrepresentation is that when she petitioned for naturalization on October 22nd, 1937, that she would renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, we claim that that was false in that she wilfully misrepresented that she would, and she took her oath with mental reservations, plus the fact that at the same time she was a member of the Communist Party, adhered to and recognized its aims and objectives, and that she could not be attached to the principles of the Constitution and well disposed to the good order and happiness of the United States because the inconsistency there is too great.

There is an impasse between being a member of the Communist Party and adhering to—and attachment to the principles of the Constitution. That those are the wilful misrepresentations in her certificate and at the time of her naturalization proceedings (Tr. Vol. I, pp. 10-11).

Six witnesses were called by the Government. Five of them identified the Petitioner as a member of the Communist Party in the pre-1938 period.*

Additionally, it was stipulated by counsel for the respective parties that two other non-resident witnesses, John

* The other witness, Baldwin, was permitted, over objection to testify as to the Petitioner's membership in the post-1943 period (Tr. Vol. I, 141, 142).

Lautner of New York City and Frank Meyer of Chicago need not be called;⁵ and that if called as witnesses by the Government, each would testify that he was "an active member and functionary of the Communist Party of the United States" from 1929-1950 and 1934-1945, respectively; and

"that it was their understanding, on the basis of their membership, training experience, and activities in the Communist Party of the United States and on the basis of documents, pamphlets and literature herein-after mentioned, which were circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period of their membership, that during the entire period of their membership the Communist Party of the United States advocated, taught and advised the overthrow of the government of the United States by force and violence" (App. p. 34). (Emphasis supplied.)

It was further agreed that the above stipulation and the documents listed therein would be received in evidence in lieu of the appearance of these witnesses.⁶

There is no evidence here that this Petitioner had ever read or was in any way familiar with the contents of any of these documents.

No evidence was offered by Petitioner.

THE OPINIONS BELOW

The Trial Court's opinion sustained the sufficiency of the "good cause" affidavit.

⁵ Each of these is a professional witness employed by or frequently used by the Government in such cases. (See "The Informer," April 10, 1954 issue of "The Nation.")

⁶ The documents are set forth in the Appendix (App., p. 35).

. On the issue of concealment and misrepresentation, the entire holding of the Trial Court was as follows:

"The proof is similar to that found in the case of *U. S. v. Nowak* decided July 15th, 1955 by this court, and the court finds that defendant did conceal (a) the fact that she was a member of the Communist Party when she filed her petition and when she obtained her citizenship; (b) that she was aware that the Communist Party, to which she belonged, was an organization having as an objective the overthrow of this government by force and violence; (c) that she was not a person of good moral character attached to the principles of the Constitution of the United States and (d) well disposed to the good order and happiness of the same, and that, on the contrary, she represented that (a) she was a person of good moral character (b) attached to the principles of the Constitution of the United States (c) well disposed to the good order and happiness of the same, and (d) not a member of any group opposed to those principles or having as an objective the overthrow of the government of the United States by force and violence.

"It is apparent, therefore, that this court has adequate grounds for the cancellation of her citizenship."

The Order of Cancellation (App. p. 42) was entered on August 12, 1955.

The Court of Appeals rendered a single opinion covering this case and *Nowak*. In affirming the Trial Court, it held that all of the legal issues presented (except as to the sufficiency of the affidavit of good cause) "have been adjudicated adversely" to Petitioner by the prior opinions of this Court of Appeals. This reference is to that Court's prior decisions in the *Sweet*, *Charnowola* and *Chomiak*

cases, 211 F.2d 118 (1954), cert. den. 348 U.S. 817. However, naturalization in each of these cases had been granted under the 1940 Act and, as pointed out in Petitioner's Brief in *Nowak* (pp. 27-35), the qualifications for naturalization as set forth in the 1940 Act were different from those under the 1906 Act which is involved here.

ARGUMENT

Essentially the same questions and the same arguments apply here as are set forth in Petitioner's brief in *Nowak*. This is so because of the similarity of the Affidavit and the factual assertions relied on to support the charges in the Complaint; the similarity in the theory of the Government in the two cases; the identical nature of the proofs relied upon;⁸ and the opinion of the Trial Court.⁹

⁸ One factual difference in the charge is that, unlike in *Nowak*, it is not claimed here that Petitioner was specifically asked about Communist Party membership. This difference is inconsequential since in *Nowak* the Trial Court found that, notwithstanding the Government's claim there, no such specific inquiry was made.

⁹ The proofs in each case consist of the recollections of professional witnesses as to what was said in meetings, conversations and lectures which allegedly occurred fifteen (15) to twenty (20) years before, and at which Petitioner is alleged to have been present; and the "expert" opinions (Tr. Vol. I, pp. 15, 16) of three such witnesses—Nowell, Lautner and Meyer—concerning the teaching and advocacy of the Communist Party in the pre-1938 period. There is no showing that either of these last two "experts" ever saw or talked with Petitioner. Pertinent here is the comment recently made by the Court of Appeals for the Seventh Circuit (*Yiannopoulos v. Robinson*, 26 U.S. Law Week 2117) concerning the unreliability of two of the professional witnesses here, Nowell and Syrakis.

⁹ The Trial Court's findings here, as is shown in the above quotation from its opinion (*supra*, p. 9) are even more general than in *Nowak*. If, as is pointed out in Petitioner's brief in *Nowak*, the findings there were too general to satisfy the criticism made by this Court in *Schneiderman v. United States*, 320 U.S. 118, at p. 129, then clearly the even more generalized findings here require a reversal.

Accordingly, Petitioner incorporates here by reference each and all of the pertinent arguments set forth in the Petitioner's brief in *Nowak*. But since this case, unlike *Nowak*, is prosecuted under the 1952 Act, it is necessary that we consider what, if any, impact this new Act has upon the legal arguments in *Nowak*.

I.

The Complaint in the present case is pursuant to Section 340(a) of the Immigration and Nationality Act of 1952 (66 Stat. 260; Title 8 U.S.C.A. 1451(a) which superseded and repealed the prior statute (The Nationality Act of 1940, Title 8, U.S.C. Sec. 738(a)). Under the 1940 Act the cancellation of a naturalization certificate was authorized "on the ground of fraud or on the ground that such certificate of citizenship was illegally procured." The 1952 Act authorizes "revocation and setting aside of the order admitting . . . to citizenship and cancelling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by wilful misrepresentation."

Thus, the first change made by the new Act is the elimination of "illegal procurement" as an expressed ground for cancellation. But what, in practical effect, does this mean?¹⁰

Under the 1940 Act much confusion developed in the decisions of the lower courts as to the distinction between "illegality" and "fraud."¹¹ The situation is summarized,

¹⁰ We have been unable to find any judicial decision interpreting the significance of this statutory change. Government counsel advised the Trial Court (Tr. Vol. I, p. 18) that this is the first case to be tried under the 1952 Act.

¹¹ For an analytical discussion of lower court decisions prior to *Schneiderman* (*supra*), see *United States v. Kusche*, 56 F. Supp. 201 (D.C. Cal.).

we think, in the following comment from a recent analytical examination of the immigration laws:

"Naturalization was illegally procured if some statutory requirement needed to qualify the alien for citizenship was lacking when the petition was granted. Thus where the final hearing on naturalization was held in the judge's chambers instead of in open court as required by law, citizenship was illegally procured. However, other procedural irregularities were often considered of minor importance and were discounted as mere technical or clerical errors. Cancellation for illegal procurement was also granted where the alien's conduct previous to naturalization showed a lack of good moral character. In such cases revocation might have been based on fraud because the petitioner had failed to disclose conduct he knew to be illegal, but the Government by proceeding on the ground of illegal procurement avoided having to prove an intentional withholding of information."

Development in the Law Immigration and Nationality, 66 Har. L.R. 643, 719, 720.

Of similar import is the comment in *51 Mich. L. Rev.*, at page 892-896, and the *Report of the President's Commission on Immigration* (1953) at page 249.¹²

The meaning attributed by the decisions of this Court to the term "illegal procurement", however, seems clear. Citizenship is "illegally procured" wherever it is apparent from the record of the naturalization proceeding, or the

¹² Counsel for the Government expressed the view at the trial that the 1952 Act eliminates illegal procurement and that "concealment of a material fact or misrepresentation are just two elements of fraud." He disclaimed any intention to charge "illegality," relying upon a claim of fraud (Tr. Vol. III, pp. 13-14).

admission of the applicant, that some qualification essential to the authority of the naturalization court to act was non-existent at the time.¹³

Thus, in *Schwinn v. United States*, 112 F.2d 74 (CA 9th) aff'd, 311 U.S. 616, 61 S.Ct. 70, the attesting witnesses as to petitioner's residence, moral character and attachment swore falsely that they had known petitioner for five (5) years and could affirm his residence for that period. The District Court granted denaturalization because of illegality and fraud (112 F.2d at p. 75), though it made no finding that petitioner himself knew of the falsity of his witnesses' oath. On appeal, the Government did not press the charge of illegality and the Court of Appeals affirmed on the ground of fraud alone, notwithstanding it also expressed the view that proof of five years' residence by the oath of two subscribing witnesses was a "jurisdictional requirement." This Court, however, in its *Per Curiam* affirmance made it clear that "The judgment is affirmed on the sole ground that the certificate of citizenship was illegally procured." The dissent of Mr. Chief Justice Stone in *Schneiderman*, at p. 176, note 2, confirms this analysis of *Schwinn*.

To the same effect is *Johannessen v. United States*, 225 U.S. 227 (applicant admitted perjury of his attesting witnesses); *United States v. Ginsberg*, 243 U.S. 472, 37 S.Ct. 422 (citizenship illegally procured because of admitted absence of statutory residence requirements and failure to hold hearing in open court; *Maney v. United States*, 278

¹³ In his concurrence in *Schneiderman*, 320 U.S. at pp. 161-162, Mr. Justice Douglas said:

"Fraud connotes perjury, concealment, falsification, misrepresentation or the like. But a certificate is illegally, as distinguished from fraudulently, procured when it is obtained without compliance with a condition precedent to the authority of the Court to grant a petition for naturalization."

U.S. 17, 49 S.Ct. 15 and *United States v. Ness*, 245 U.S. 319, 38 S.Ct. 118 (illegality found because no properly filed certificate of arrival); *United States v. Thind*, 261 U.S. 204, 43 S.Ct. 338 (illegality because petitioner, admittedly a Hindu, was not eligible for naturalization); and *Luria v. United States*, 231 U.S. 9, 34 S.Ct. 10 (Petitioner's departure from the country shortly after his naturalization warranted statutory presumption that the requisite intent to reside here permanently did not exist at the time of naturalization).¹⁴

Thus, all of the "illegal procurement" cases in this Court have had two things in common: one, a failure, apparent from the naturalization record or by admission of the applicant, to satisfy some requisite held to be a necessary condition to the power of the naturalization court to act; and, two, in none of the cases was there a showing or finding that the petitioner himself was guilty of intentional wrongdoing amounting to concealment or misrepresentation.

But (as pointed out in *Nowak* pp. 45-48) even if the 1940 Act had not expressly authorized cancellation of judgments of naturalization when illegally procured, this result would follow under recognized common law principles; a judgment of a court which purports to act when it lacks the authority or power to do so always has been regarded as a nullity.

Thus, the elimination of "illegal procurement" in the 1952 Act has significance for the present proceeding only by

¹⁴ Illegality also was the sole ground before this Court in *Schneiderman* (*supra*), based upon the charge that petitioner had not "behaved as a man of good moral character attached to the principles of the Constitution." However, this Court did not expressly determine the legal validity of this charge to support "illegal procurement" since it found the evidence insufficient.

reason of the fact that it confirms the argument set forth in Petitioner's brief in *Nowak* (pp. 29-34).¹⁵

II.

The 1952 Act also drops "fraud" as a ground for denaturalization and substitutes "concealment of a material fact or wilful misrepresentation."¹⁶ On its face this statutory change poses at least three (3) questions having constitutional significance:

1. It might be argued that in thus stating the grounds for denaturalization under the 1952 Act, Congress has directed that a judicial decree be re-examined and set aside on grounds less than "lack of jurisdiction or the kind of fraud which traditionally vitiates judgments." (*Schneiderman, supra*, at p. 124.) Obviously, this new ground is considerably broader (and hence, more favorable to the Government) than the traditional concept of the kind of "wrongful conduct" (*Johannessen v. United States*, 225 U.S. 227, 243) required to justify equitable relief from a final judgment. (See 31 Am. Jur., Judgments, Sec. 653, *et seq.*, Cf. *Noble v. Union River Logging*, 147 U.S. 165, 13 S.Ct. 271.) For this new ground, on its face, does not contemplate any showing by the Government that the alleged concealment was intentional, or that the alleged misrepresen-

¹⁵ The Senate report on the 1952 Act (S. Rep. 1515 at p. 756, 81st Cong. 2nd Sess. (1950)) suggested that one purpose of the deletion of the reference to "illegal procurement" was to eliminate judicial conflict as to the *res adjudicata* status of naturalization proceedings.

¹⁶ The Senate Report (S. Rep. 1515, p. 756, 81st Congress, 2nd Sess. 1950) suggests that this change was intended to eliminate the "Judicial conflict as to whether fraud had to be extrinsic or whether intrinsic fraud would suffice" (51 Mich. L. Rev., *supra*, p. 893).

tation involved a material fact, or that what is relied upon as the wrongful conduct "really" prevented the party complaining from making a full and fair defense." *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 43 S.Ct. 458, 464. All of these are elements heretofore regarded as essential to sustain a charge of fraud sufficient to justify the re-examination and setting aside of a final judgment. There is thus presented an issue with respect to Article III of the Constitution and the power of the Congress to invade the judicial function. Cf. *Muskrat v. United States*, 219 U.S. 346, 31 S.Ct. 250. This issue was left undetermined by the majority in *Schneiderman* (*supra*, at p. 124; but see the concurring opinion of Mr. Justice Rutledge).

2. "Concealment of a material fact" is a highly elastic concept, which gives enormous scope to the Immigration Service and the judiciary. "Concealment" presupposes a duty of communication. And where the claimed concealment involves matters of opinion and appraisal of political doctrine or assessment of constitutional rights in areas where even the Courts disagree (*Schneiderman*, *supra*, notes 29-31), a petitioner for citizenship must experience great difficulty in determining at his peril if such a duty exists. Again, what is and what is not "a material fact" (outside of the expressed provisions of the statute itself) also leaves a wide expansion for differing views, depending upon the time, the locale and the circumstances.¹⁷

¹⁷ "Wilful misrepresentation" is not limited in the statute to material facts; it can be said to embrace every fact considered important enough to be inquired of in the Petition for Naturalization. And since the Attorney General is empowered under Section 334(a) to prescribe what allegations must be made in the Petition, subject only to the limitation that they be "material to . . . naturalization," the problem of what is and what is not material is unresolved.

In 1938, when Petitioner was naturalized, active membership in the Communist Party was not equated with lack of good moral character or attachment to the Constitution. The Party was a legal political party. But in 1953, when the present suit was commenced (or in 1955 when it was tried), the situation had changed. (See Appendices E and F, Petitioner's brief in *Nowak*.) What standards, therefore, are to be applied by a Court sitting in 1955 in arriving at what was material in 1938? Or is the judge to apply present-day concepts of materiality? If so, then it cannot be said here, as this Court said in *United States v. Luria* (*supra* at p. 24), that the denaturalization provision "does not make any act fraudulent or illegal that was honest and legal when done . . ." Moreover, what prior notice did such an applicant for citizenship have in 1938 that his then legal activity on behalf of a recognized political party would later be held to be wrongful conduct affecting his good moral character and attachment to the Constitution?

What emerges from even this cursory examination is that the statute, on its face, presents serious questions of unconstitutionality;¹⁸ and this in an area where the Court has shown special regard for protection of political rights. See *Sweezy v. New Hampshire*, 77 S.Ct. 1203.

3. If, as we have suggested (*supra* p. 15), the 1952 Act provides for denaturalization upon grounds less than "lack of jurisdiction or the kind of fraud which traditionally vitiates judgments", a further question of constitutional fairness or unfairness is presented. For we have here something very much more than a mere change in rules of

¹⁸ The Fifth Amendment's prohibition of constitutional vagueness is not limited to criminal proceedings. See *Jordan v. De-George*, 341 U.S. 223, 231; 71 S.Ct. 703 where the doctrine is applied to a deportation proceeding "in view of the grave nature of deportation."

evidence (Cf. *Luria v. United States*, 231 U.S. 9, at pp. 26, 27); rather what we have is something akin to a Bill of Attainder in violation of Article 1, Section 9 of the Constitution. (*Cummings v. Missouri*, 71 U.S. 277.)

Thus, at a minimum there is presented, by the *ex post facto* provision of the statute, a question of deprivation of vested rights in a manner not sanctioned by the due process clause of the Fifth Amendment. Petitioner was granted a judgment which, at the time of its rendition in 1938 was impervious to attack except for "illegal procurement" or "fraud". Valuable rights embraced in the package known as "citizenship" became vested. They can be divested only in accordance with due process.

Due process in 1938 required a showing of "illegal procurement" or the kind of fraud which traditionally voids a judicial decree. To provide now, as the 1952 Act does on its face, for the cancellation of these rights for something less than "traditional" fraud is a denial of substantive due process. Cf. *Noble v. Union River Logging Railroad Co.*, 147 U.S. 165, 13 S.Ct. 271.

It is not necessary, however, that we enlarge further upon the constitutional difficulties which the 1952 Act presents on its face. (See 51 Mich. L. Rev. at p. 895.) For it is obvious that each of these issues could be avoided by reading into the language of the 1952 Act a requirement that the Government establish each of the elements of traditional fraud. This, in effect, is what the Government's theory here undertakes to do, to establish "fraud" by proving in this case every element that it was required to prove in *Nowak*. This is recognized in the above quoted opinion of the Trial Court (*supra* p. 9) and conceded by the Government at the trial. Tr. Vol. 1, p. 9; Vol. III, p. 14.

Accordingly, the legal arguments made by the petitioner in *Nowak* on the failure of the Government to establish fraud as a matter of law are pertinent here.

III.

It remains only to consider whether the evidence here, in fact, establishes traditional fraud. Unlike the petitioner in *Nowak*, we assume for purposes of this presentation that the evidence sufficiently establishes Petitioner's membership in the Communist Party during the period immediately prior to her naturalization in 1938 and that she did not volunteer disclosure of such membership. The pertinent inquiry, therefore, is the sufficiency of the evidence relied upon here to show (a) the alleged illegal nature of the teaching and advocacy of that Party in that period; and (b) Petitioner's knowledge and participation in that advocacy.

No attempt is made here to summarize the brief testimony offered by the Government on these questions. Instead, we invite the attention of the Court to the printed appendix filed with and contained in the Petition for Certiorari herein, where this testimony is set forth verbatim.¹⁹ We submit that when the standards of proof discussed in Petitioner's brief in *Nowak* are applied to the evidence here, it is apparent that the proof here falls far short of the "clear, convincing and unequivocal evidence" necessary to establish each of the above elements of fraud.

¹⁹ This brief is being printed at public expense. Accordingly, we deem it inexpedient to reprint documents already before the Court in printed form.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

GOODMAN, CROCKETT, EDEN AND ROBB

By **ERNEST GOODMAN and GEO. W. CROCKETT, JR.**
Counsel for Petitioner
3220 Cadillac Tower
Detroit 26, Michigan

Detroit, Michigan
November 12, 1957

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APPENDIX

[fol. 2a] AMENDED COMPLAINT TO CANCEL CITIZENSHIP

(Filed July 20, 1953)

The United States of America, by Fred W. Kaess, United States Attorney for the Eastern District of Michigan, by Dwight K. Hamborsky, Assistant United States Attorney for said district, herewith presented its amended complaint under and pursuant to Section 340(a) of the Immigration and Nationality Act (66 Stat. 260; 8 U.S.C.A. 1451(a)), and respectfully represents:

1. That the said Rebecca Maisenberg was, prior to January 24, 1938, a native and citizen of the Union of Soviet Socialist Republics;

2. That the said Rebecca Maisenberg entered the United States on September 2, 1912, at New York, New York, and thereafter resided in the United States and now resides in the United States and in this judicial district, her last known place of residence being 2493 W. Philadelphia, Detroit, Michigan;

3. That on or about October 22, 1937, the said Rebecca Maisenberg filed Petition for Naturalization No. 111166 in the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan, under the general provisions of the Act of June 29, 1906 and Act of September 22, 1922, as amended;

4. That during the proceedings which led to her naturalization said Rebecca Maisenberg alleged under oath:

(a) That she fully believed in the principles and form of government of the United States; and that she did not belong to and was not associated with any organization which teaches or advocates the overthrow of [fol. 3a] existing government in this country. This statement was made in Preliminary Form for Petition for Naturalization filed with the District Director, Immigration and Naturalization Service, Detroit, Michigan, on or about June 30, 1937;

(b) That she was not a disbeliever in or opposed to organized government or a member of or affiliated

with any organization or body of persons teaching disbelief in or opposed to organized government; that she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; and that she would renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, State or sovereignty of which she was a subject, and particularly to the Union of Soviet Socialist Republic. This statement was made in her petition for naturalization;

- (c) That she would support and defend the Constitution and laws of the United States of America against all enemies foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation without any mental reservation or purpose of evasion. This statement was made in open court in Oath of Allegiance, more fully set out in paragraph 5;

5. That on or about January 24, 1938, the said Rebecca Maisenberg took an oath of allegiance to the United States in open court which reads as follows:

"I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely and without any mental reservation or purpose of evasion: So Help Me God."

[fol. 4a] whereupon the United States District Court for the Eastern District of Michigan, Southern Division, at Detroit, Michigan, relying upon the truth and good faith of the representations made by the said Rebecca Maisenberg, in her petition for citizenship, and other Immigration and Naturalization forms required of a petitioner for naturalization, and in her oral testimony before the Naturaliza-

tion Examiner, granted the prayer in her petition and entered its order admitting her to citizenship of the United States, and thereupon Certificate of Naturalization No. 4333671 was issued to her by the Clerk of the Court;

6. That the representations aforesaid made by the said Rebecca Maisenberg in her petition for citizenship and other naturalization forms required of an applicant for citizenship before the Naturalization Examiner, as well as the oath which she took as described above, were false and untrue, and at the time of making said representations and taking said oath said defendant knew that they were false and untrue, in that the said defendant concealed the fact that she was a member of and affiliated with the Communist Party of the United States from the year 1930 until the date of her naturalization, and the Communist Party of the United States was an organization which during the years from 1930 to 1938, inclusive:

(a) Advised, advocated, or taught the overthrow by force and violence of the government of the United States;

(d) Advised, advocated, or taught sabotage; propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

[fol. 5a] (c) Advised, advocated, or taught the unlawful damage, injury, or destruction of property;

(b) Advised, advocated, or taught the duty, necessity, or

(e) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in their possession for the purpose of circulation, distribution, publication, issuing, or display, written or printed matter which advised, advocated, or taught the performance of the acts described in subparagraphs 6(a) (b) (c) and (d);

(f) Promoted, influenced, and advanced the political activities, public relations, and public policy of the Union of Soviet Socialist Republics;

That during the years 1930 to 1938, inclusive, the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subject of foreign countries and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such international organization were binding upon other Communist parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not;

That the said Rebecca Maisenberg, at all of the times above mentioned, was familiar with and approved of the activities, aims, and teachings of the Communist Party, as set forth above;

7. That at all times since 1930 to the date of her naturalization and even thereafter, the said Rebecca Maisenberg bore allegiance to the Third Communist International and to the Union of Soviet Socialist Republics; that at the time of her admission to United States citizenship the said [fol. 6a] Rebecca Maizenberg did not intend to renounce or abjure her allegiance to the said Third Communist International or the Union of Soviet Socialist Republics, but, on the contrary, intended to retain her allegiance to such organization and to such foreign power;

8. That the said Rebecca Maisenberg deliberately and intentionally testified falsely in the course of her naturalization proceeding, and concealed the material facts as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to conceal her lack of attachment to the principles of the Constitution; to induce the Immigration and Naturalization Service to make an unconditional recommendation to the Court that her petition be granted; to preclude inquiry by the Court concerning her qualifications for citizenship; and to procure naturalization in violation of law;

9. That the United States Attorney instituted this proceeding upon the certificate of Reuben Speiser, an attorney

for the Immigration and Naturalization Service, United States Department of Justice, showing good cause therefor, which affidavit is attached hereto and made a part hereof;

10. That the said order of admission to citizenship and certificate of naturalization for said Rebecca Maisenberg were procured by concealment of material facts and by willful misrepresentation in that, contrary to her allegations set forth in paragraph 4:

- (a) That she was not a person, during the period required by law and at the time she applied for and obtained citizenship, who was attached to the principles of the Constitution or well disposed to the good order [fol. 7a] and happiness of the United States inasmuch as she was during said period and at the time of naturalization an active member of the Communist Party of the United States, an organization which, to her knowledge, espoused the aims, objectives and programs more particularly set forth in paragraph 6 above;
- (b) That despite her oath to the contrary, she did not intend to support the Constitution and laws of the United States and renounce all foreign allegiance that she did not take the obligation without mental reservation, inasmuch as she intended to and did retain allegiance to the Union of Soviet Socialist Republics;
- (c) That she was affiliated with the Communist Party of the United States, an organization teaching disbelief or opposition to organized government;

WHEREFORE, plaintiff prays that an order be entered in this cause revoking and setting aside the order heretofore entered admitting the said Rebecca Maisenberg to citizenship, upon petition No. 11166, and cancelling Certificate of Naturalization No. 4333671, heretofore issued to Rebecca Maisenberg, on the ground that same was procured by concealment of material facts and by wilful misrepresentation; and further ordering that said certificate shall be delivered and surrendered to the Clerk of the United States

District Court for the Eastern District of Michigan, and transmitted by him to the Commissioner of Immigration and Naturalization, Washington, D. C., and that the Clerk of this Court forthwith transmit a certified copy of this order to the Commissioner of Immigration and Naturalization, Washington, D. C.; and that the said defendant be forever restrained and enjoined from claiming any right, privilege, benefit or advantage whatsoever under said certificate of [fol. 8a] naturalization or order admitting her to citizenship; and for such other and further relief as may be proper.

FRED W. KAESS
United States Attorney

DWIGHT K. HAMBORSKY
Assistant U. S. Attorney

AFFIDAVIT OF REUBEN SPEISER

UNITED STATES OF AMERICA)

) ss:

C-4333671

DISTRICT OF COLUMBIA .)

Reuben Speiser, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and as such has access to the official records of the said Service, from which the following facts appear:

(a) That one REBECCA MAISENBERG filed a petition for naturalization in the United States District Court at Detroit, Michigan, on October 22, 1937 and was admitted to citizenship by that court on January 24, 1938, receiving naturalization certificate No. 4333671.

(b) That in the proceedings which led to her naturalization, the said REBECCA MAISENBERG alleged under oath:

(I) That the only names ever used by her were Rebecca Rosenberg and Rebecca Maisenberg.

[fol. 9a] (II) That she fully believed in the form of government of the United States; and that she

did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country.

(III) That she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States; that it was her intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the Union of Soviet Socialist Republics, of which she was a subject or citizen.

(IV) That she would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation freely without any mental reservation or purpose of evasion.

(c) That the allegations of said Rebecca Maisenberg as set forth in subparagraph 1(c) were false and untrue.

(d) That the said Rebecca Maisenberg has been an active member of the Communist Party of the United States since 1930; and, in connection with such membership had used and been known by the name of Rebecca or Rifka Lee.

(e) That the Communist Party of the United States is an organization which at all times since 1930, as the said Rebecca Maisenberg well knew:

(I) Advised, advocated, or taught the overthrow by force or violence of the government of the United States;

[fol. 10a] (II) Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

- (III) Advised, advocated, or taught the unlawful damage, injury, or destruction of property;
 - (IV) Advised, advocated, or taught sabotage;
 - (V) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated, or taught the performance of the acts described in subparagraphs 1(e), I, II, III, and IV;
 - (VI) Promoted, influenced, and advanced the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.
- (f) That at all of the times above mentioned, as the said Rebecca Maisenberg well knew, the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subjects of the Union of Soviet Socialist Republics and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organizations were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions [fol. 11a] were contrary to the laws of the United States or not.
- (g) That by reason of the foregoing, the said Rebecca Maisenberg at the time she applied for and obtained naturalization: was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States; did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; and did not intend to abjure or renounce allegiance and fidelity to the Union of Soviet Socialist Republics.

(h) That the said Rebecca Maisenberg intentionally and deliberately made false statements and concealed the true facts in the proceedings leading to her naturalization, as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to induce the naturalization examiner to make an unconditional recommendation to the court that her petition be granted; to preclude inquiry by the court concerning her qualifications for citizenship; and to procure naturalization in violation of law.

2. That good cause exists for the institution of a suit under Section 340(a) of the Immigration and Nationality Act (Public Law 414, 82nd Congress) to set aside and cancel the naturalization of said Rebecca Maisenberg as having been procured by concealment of material facts and [fol. 12a] by wilful misrepresentation.

3. That the last known place of residence of said Rebecca Maisenberg is 2493 West Philadelphia, Detroit, Michigan.

REUBEN SPEISER
Attorney

Subscribed and sworn to at Washington in the District of Columbia this 10th day of March 1953, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 332d. 1 of Title 8 of the Code of Federal Regulations to administer oaths.

ALBERT T. REITZEL
Assistant General Counsel

[fol. 13a] MOTION PURSUANT TO RULE 9 OF THE
RULES OF CIVIL PROCEDURE

(Filed June 15, 1953)

Defendant moves that plaintiff be required to amend its Complaint so as to set forth in separate counts and with the particularity required by Rule 9, all averments of the

circumstances of the alleged fraud by defendant in obtaining naturalization as distinct from averments showing alleged illegal procurement of naturalization.

**MOTION FOR MORE DEFINITE STATEMENT PURSUANT
TO RULE 12(c) OF THE RULES OF CIVIL PROCEDURE**

Defendant moves as follows:

That plaintiff be required to file and serve upon defendant a more definite statement of its claim in the following particulars:

(a) A copy of the petition for naturalization described in paragraph 3. Defendant has no copy or present recollection of its contents and is therefore unable to answer said paragraph.

(b) A copy of the transcript, notes or other documents containing the alleged statements relied upon by plaintiff in paragraph 4. Defendant has no copy of any such documents nor any present recollection of any such statement and is therefore unable to answer this paragraph.

MOTION TO STRIKE AND FOR ALTERNATIVE RELIEF

The defendant moves the Court for an order to strike the following portion of the Complaint and the Supporting Affidavit filed herein, upon the ground that the same are irrelevant, contradictory and immaterial; and upon the further ground that said portions of the Complaint and [fol. 14a] Affidavit are highly prejudicial, not capable of proper cross-examination thereon and will tend to embarrass the defendant in the preparation and presentation of his defense:

1. Those portions of Paragraphs C, D, E and F under paragraph 6 of the Complaint which allege that the defendant and the Communist Party, during the period from 1919-1931, advised, advocated or taught the unlawful destruction of property, sabotage, the writing and circulating of literature advocating such unlawful destruction of property and sabotage and the promotion and advancement of political activities, public relations and public policy of the Union of Soviet Socialist Republics. Defendant alleges that

such allegations were not encompassed nor included in the naturalization law applicable at the time of defendant's naturalization.

2. Similar allegations as those mentioned in paragraph 1 above which appear in sub-paragraphs III, IV, V and VI of paragraph 1(e) of the affidavit of Reuben Speiser attached to said Complaint. Defendant alleges that such allegations were not encompassed nor included in the naturalization law applicable at the time of defendant's naturalization.

3. Those portions of paragraphs 6 and 9 of the Complaint and paragraph 1 of the Affidavit of Reuben Speiser which relate to the Union of Soviet Socialist Republics and to "an international organization" and/or "the Third Communist International." Defendant alleges insofar as said allegations are intended to show allegiance by the defendant to an international organization known as the "Third Communist International," they are immaterial because there is no showing that the Third Communist International was a foreign government within the meaning of the nat-[fol. 15a] uralization law in effect at the time of the defendant's naturalization.

And, in the alternative, defendant moves, pursuant to Rules 12(E) and Rule 34 of the Rules of Civil Procedure for the following alternative relief:

As to affidavit of Reuben Speiser attached to Complaint; said affidavit is alleged to be based, in its entirety, upon and to set forth facts appearing from, "official records" of the Immigration and Naturalization Service. With respect to those portions of the affidavit which relate to alleged teaching, advocacy and publications of the Communist Party, the political activities, public relations and public policy of the Union of Soviet Socialist Republics, and the nature and character of the Third Communist International, defendant requests that plaintiff be required to amend said affidavit so as to set forth the following:

- (a) Identify and specify such records by name and date:
- (b) The period of time when such records were compiled and when such information first became known to plaintiff;

- (c) The statutory authority by which such records were compiled, maintained and acquired status as "official records" of the Immigration and Naturalization Service;

and further, that plaintiff be required, pursuant to Rule 34 of the Federal Rules of Civil Procedure, to produce and permit the inspection, copying or photographing of such official records.

GOODMAN, CROCKETT, EDEN & ROBB

By ERNEST GOODMAN
Attorney for Defendant
3220 Cadillac Tower
Detroit 26, Michigan
Woodward 3-6268

Dated: June 16, 1953

[fol. 16a] ANSWER TO COMPLAINT TO CANCEL CITIZENSHIP
(Filed January 14, 1955)

NOW COMES REBECCA MAISENBERG, defendant herein by her attorneys, GOODMAN, CROCKETT, EDEN & ROBB and in answer to the Complaint herein, says:

1. Answering Paragraph One (1) of the Amended Complaint, defendant admits the allegations contained therein.

2. Answering Paragraph Two (2) of the Amended Complaint, defendant admits the allegations contained therein.

3. Answering Paragraph Three (3) of the Amended Complaint, defendant admits the allegations contained therein.

4. Answering Paragraph Four (4) of the Amended Complaint, defendant admits the allegations contained therein.

5. Answering Paragraph Five (5) of the Amended Complaint, defendant admits the allegations therein contained, except that defendant has no knowledge as to the factors upon which the United States District Court relied in grant-

ing her citizenship and therefore neither admits nor denies the allegation that the United States District Court relied upon the true and good faith of defendant's representations, and leaves plaintiff to its proofs.

6. Answering Paragraph Six (6) of the Amended Complaint, defendant denies the allegations contained therein.

7. Answering Paragraph Seven (7) of the Amended Complaint, defendant denies the allegations contained therein.

8. Answering Paragraph Eight (8) of the Amended Complaint, defendant denies the allegations contained therein.

[fol. 17a] 9. Answering Paragraph Nine (9) of the Amended Complaint, defendant has no knowledge as to whether the United States Attorney instituted this proceeding on the certificate of Reuben Speiser and therefore neither admits nor denies said allegation but leaves plaintiff to its proofs. Defendant denies that the affidavit attached to the complaint shows good cause for the institution of this proceeding. Defendant denies that said affidavit is properly a part of the complaint and shows that said affidavit is not based upon the personal knowledge of the affiant but upon hearsay, and moves that said affidavit of the affiant be stricken from the Amended Complaint.

10. Answering Paragraph Ten (10) of the Amended Complaint, defendant denies the allegations contained therein.

11. Further answering said Amended Complaint, defendant avers—

(a) That Section 340(a) of the Immigration and Nationality Act upon which said Amended Complaint is based, on its face and as applied to this defendant deprives her of rights guaranteed to her under the First and Fifth Amendments to the Federal Constitution, that it constitutes ex post facto legislation and is therefore unconstitutional.

(b) This Court has no jurisdiction by reason of the insufficiency of the affidavit attached to the Complaint

as provided by Section 1451(a), Title 8, U.S. C. A. and under Rules 8, 9(b) and 10(b) of the Federal Rules of Civil Procedure.

[fol. 18a] Defendant therefore denies that plaintiff is entitled to any relief whatsoever in the premises and moves that the Amended Complaint be dismissed.

GOODMAN, CROCKETT, EDEN & ROBB

By Ernest Goodman
Attorneys for Defendant
3220 Cadillac Tower
Detroit 26, Michigan
WO 3-6268

Dated: JANUARY 12, 1955

STIPULATION

(Filed January 21, 1955)

IT IS HEREBY STIPULATED AND AGREED by and between Rebecca Maisenberg, the defendant herein, acting by her attorney, Ernest Goodman, and Fred W. Kaess, United States Attorney for the Eastern District of Michigan, by Dwight K. Hamborsky, Assistant United States Attorney for said district, that for the purpose of these proceedings and these proceedings only:

1. That if John Lautner were to testify in these proceedings he would testify that he was an active member and functionary of the Communist Party of the United States from November 1929 to about January 1950;

2. That if Frank Meyer were to testify in these proceedings he would testify that he was an active member and [fol. 19a] functionary of the Communist Party of the United States from 1934 through 1945;

3. That if called as witnesses to testify in this proceeding John Lautner and Frank Meyer would testify that it was their understanding, on the basis of their membership, training, experience, and activities in the Communist Party of the United States and on the basis of the documents,

pamphlets and literature hereinafter mentioned, which were circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period of their membership, that during the entire period of their membership the Communist Party of the United States advocated, taught, and advised the overthrow of the government of the United States by force and violence;

4. That if both John Lautner and Frank Meyer were to testify in these proceedings they would testify that the following literature was circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period from 1930, until the termination of their membership in the Communist Party of the United States:

(a) "The Communist Manifesto", by Carl Marx and Frederick Engels, by International Publishers, Inc.;

(b) "State and Revolution", by V. I. Lenin, copyrighted 1932 by International Publishers, Inc.;

(c) "Left Wing Communism and Infantile Disorder", by V. I. Lenin, copyrighted by International Publishers, New York, 1940;

(d) "Program of the Communist Internationale", [fol. 20a] copyrighted by Workers Library Publishers in 1929, third edition printed in February 1936;

(e) "Foundations of Leninism", by Joseph Stalin, copyrighted in 1939 by International Publishers, Inc.;

(f) "The Communist Party: A Manual on Organization", by J. Peters, published in 1935 by the Workers Library Publishers;

(g) "The Struggle Against Imperialist War and the Tasks of the Communists", published by the Workers Library Publishers, second edition of July 1934;

(h) "Why Communism", by M. J. Olgin, published by Workers Library Publishers, December 1933;

(i) "Why every worker Should Join the Communist Party", published by Workers Library Publishers, Inc., no printing date being shown;

(j) "Problems of Leninism", by Joseph Stalin, copyrighted in 1934 by International Publishers Company, Inc.;

(k) "The Ultimate Aim", copyrighted in 1935 by International Publishers Company, Inc.;

(l) "Report to the Eighth Convention Communist Party", by Earl Browder, 1934, published by Workers Library Publishers;

(m) "Resolutions of the Seventh Congress of the Communist Internationale", published in 1935, Workers Library Publishers;

(n) "The Twenty-One Conditions of Admission into [fol. 21a] the Communist Internationale", by O. Piatnitsky, published by Workers Library Publishers; published February 1934.

5. That the testimony of John Lautner and Frank Meyer as contained in paragraphs 1, 2, 3 and 4, shall be incorporated into and made a part of these proceedings to the same effect as if they had testified personally in these proceedings;

6. That copies or photo off-set copies of the literature identified by the witnesses in paragraph 4 as having been circulated, distributed, printed or published by the Communist Party of the United States, shall be incorporated into and made a part of the record of these proceedings as exhibits to the same effect as if identified and introduced as exhibits in these proceedings and marked as Government exhibits 3-A through 3-N, inclusive.

FRED W. KAESS

United States Attorney

By Dwight K. Hamborsky
Dwight K. HAMBORSKY
Assistant U. S. Attorney
Attorneys for Plaintiff

GOODMAN, CROCKETT, EDEN & ROBB

By Ernest Goodman
Attorneys for Defendant.

Date: Jan. 21, 1955

[fol. 22a]

U.S. DEPARTMENT OF LABOR
IMMIGRATION AND NATURALIZATION SERVICE

APPLICANT, FILED UNDER PROVISIONS OF THE M. W. ACT ETC.

APPLICATION FOR A CERTIFICATE OF ARRIVAL

Form A-2214

and

No.

PRELIMINARY FORM FOR PETITION FOR NATURALIZATION

For use in searching records of arrival:

RECORDS EXAMINED

RECORD FOUND

Card Index

Index books

Manifests

Place

Name

Date

Manner

ROISENBERG, RIW'X E

BIRMA SEPT 2, 1912

Theodore Melner 7/24/37

Use Form 100-Im. in issuing certificate of arrival on this application.

4297 - 10-26

TO THE APPLICANT. Do not write above this line. Read carefully and follow the instructions on last page hereof.

Take or mail this application and your money order to—
IMMIGRATION AND NATURALIZATION SERVICE,

439 New Federal Building,

DETROIT, MICH.

Date June 25th, 1937

I, Mrs./ REBECCA MAISENBERG,

Detroit,

Wayne,

Michigan,

residing at

5705 Brush Street,

United States District

Court at

Detroit,

Michigan, desire to file petition for naturalization in accordance with

the naturalization law. I submit herewith a statement of facts to be used in filing such petition, two photographs of me, each of which I have signed, and my declaration of intention (first paper), if one is required.

See instructions on page 4 hereof, paragraph entitled "Money Order." If you are not exempted therefrom you must secure a money order in payment for a certificate of arrival and fill in the blank below:

I hereby apply for a certificate of arrival showing my lawful entry into the United States for permanent residence, and inclose money order No. 90126 in the sum of \$2.50 made payable to the order of the "Commissioner of Immigration and Naturalization, Washington, D.C.," in payment for the certificate of my arrival.

I arrived in the United States through the port of New York,

New York,

under the name of Rebecca Rosenberg,

Sept. 2nd, 1912

on the vessel SS. Birma - Russian American Line

Additional facts to aid in locating a record of my arrival:

I, **Mrs./ REBECCA MAISENBERG,** residing at **8705 Brush Street,**
Detroit, Wayne, Michigan, do hereby declare to file petition for naturalization in the
United States District Court at Detroit, Michigan, in accordance with
the naturalization law. I submit herewith a statement of facts to be used in filing such petition, two photographs of me, each of
which I have signed, and my declaration of intention (first paper), if one is required.

See instructions on page 4 hereof, paragraph entitled "Money Order." If you are not exempted therefrom you must
secure a money order in payment for a certificate of arrival and fill in the blank below:

I hereby apply for a certificate of arrival showing my lawful entry into the United States for permanent residence, and inclose
money order No. **90126** in the sum of \$2.50 made payable to the order of the "Commissioner of Immigration
and Naturalization, Washington, D.C.," in payment for the certificate of my arrival.

I arrived in the United States through the port of **New York, New York,**
under the name of **Rebecca Rosenberg,** on **Sept. 2nd, 1912**
on the vessel **S.S. Birma - Russian American Line**

Additional facts to aid in locating a record of my arrival:

1. I have **yes** used another name in this country than that given above. (If so) it was **Rebecca Maisenberg**
I used that name because **it is my married name, name of my husband.**
2. The full name of the person shown on my steamship ticket was **Rebecca Rosenberg**
3. I was born in **Zitomir, Russia, March 1st, 1901**
4. My father's full name is **Morris Rosenberg**
5. My mother's maiden name was **Celia Goldmond.**
6. (If a married woman) My maiden name was **Rebecca Rosenberg**
7. My last foreign residence was **Zitomir, Russia**
8. The place where I took the ship or train which landed me in the United States was **Libau, Latvia**
9. The ticket on which I came to this country was bought at **prepaid steamship ticket sent to me from**
10. (If arrival by ship) Name of steamship line was **Russian America Line (New York, N.Y.)**
first, second, or third cabin **third cabin** I arrived as a passenger, stow away, or otherwise
otherwise **as a passenger.**
11. I traveled on (an immigration visa, a passport, or permit to register) **Passport (mother's)**
12. My original Immigrant Identification Card No. **none issued then to me.**
13. I paid \$ **none required then for me, I believe, I came with my mother**
14. I was examined by United States immigration officers at **New York, New York,**
15. (If not examined, state why, and give the circumstances of my entry)
16. The person in the United States to whom I was coming was **my father, Morris Rosenberg,**
17. The place in the United States to which I was going was **New York, New York,**
18. The names of some of the passengers or other persons I traveled with and their relationship to me, if any, are
my mother, Celia Rosenberg, my sister, Eva and my two brothers, Saul and Leo.
I was previously in the United States from **never in the U. S. previously.**

[fol. 23a]

(2)

I have set forth below my answers to the following questions asked of me:

18. Have you been absent from the United States since the date of your arrival as stated on page 1 of this form? **NOY92**

If so, state month and year you left. month and year you returned

To what country did you go? For what reason?

Is this the only time you have been out of the United States?

If not, give full particulars as to other absences:

19. In what places in the United States have you resided?

New York, **New York,** From **September** **1912** to **March,** **1926**

Detroit, **Michigan,** From **March,** **1926** to **present date.**

21. What were the names and addresses of your employers during the two years immediately prior to the date of this statement?

Housewife, **also in Business for my self.** **(1926-1937)**

Dress and Hat Shop at **13806 Woodward Ave., Detroit,** **Michigan.**

22. Do you understand the principles of government of the United States? **yes**

23. Do you fully believe in the form of government of the United States? **yes**

24. Are you ready to answer questions as to the principles and form of government of the United States? **yes**

What have you done to prepare yourself for an examination on the government of the United States?

Studied and read about citizenship and government at home.

25. Have you read the following oath of allegiance? **yes**

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to **Russia**, of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So HELP ME GOD.

Are you willing to take this oath in becoming a citizen? **yes**

26. If necessary, are you willing to take up arms in defense of this country? **yes**

Did you claim exemption from the draft during the World War because you were an alien?

Did you surrender your declaration (first paper) at that time?

27. If not now married, have you ever been married? **now married** Are you divorced? **no.**

Dress and Hat Shop at

13806 Woodward Ave., Detroit,

Michigan.

22. Do you understand the principles of government of the United States? **yes**
23. Do you fully believe in the form of government of the United States? **yes**
24. Are you ready to answer questions as to the principles and form of government of the United States? **yes**

What have you done to prepare yourself for an examination on the government of the United States?

Studied and read about citizenship and government at home.

25. Have you read the following oath of allegiance? **yes**

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to **Russia**, of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God.

Are you willing to take this oath in becoming a citizen? **yes**

26. If necessary, are you willing to take up arms in defense of this country? **yes**

Did you claim exemption from the draft during the World War because you were an alien?

Did you surrender your declaration (first paper) at that time?

27. If not now married, have you ever been married? **now married** Are you divorced? **no**

Are you a believer in the practice of polygamy? **no**

28. Are you a believer in anarchy? **no** Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country? **no**

29. Have you ever been an inmate of an insane asylum? **no**

30. Have you ever been dependent upon public charity? **no**

31. Have you ever been arrested or charged with violation of any law of the United States or State or any city ordinance or traffic regulation? **no** If so, give full particulars **none**

32. (a) In what place in the United States did you meet for the first time your first witness named on the opposite page

How often have you seen this witness each month since the date you first met him (her)?

At what places?

- (b) In what place in the United States did you meet for the first time your second witness named on the opposite page?

How often have you seen this witness each month since the date you first met him (her)?

At what places?

I certify that all the statements made by me in this application and form are true to the best of my knowledge and belief.

No 98614

The above statements

Were made by me on 10-1-34

Mrs. Rebecca Rosenberg

8706 Brush Street, Detroit, Michigan.

Rebecca Rosenberg

[fol. 24a]

TRIPlicate (1)
(To accompany
monthly report on
Form 2308)

UNITED STATES OF AMERICA

PETITION FOR NATURALIZATION

To the Honorable the District United States Court at Detroit
The petitioner of ~~Indecent Exposure~~
(1) My place of residence is ~~3708 North 21, Detroit, Mich~~ (2) My occupation is ~~Proprietor~~
(3) I was born in ~~Attamer, Russia~~ March 1, 1901 My ~~name~~
(4) ~~My name was changed under Act of September 22, 1922~~
Court of ~~Attamer, Russia~~
(5) I am married The name of my wife or husband is ~~Joseph Finter~~
we were married on ~~June 4, 1917~~ New York, N.Y. He was
born at ~~Attamer, Russia~~ July 22, 1898 entered the United States
at ~~New York, N.Y.~~ June 1912 for permanent residence therein, and now
resides at ~~Attamer, Russia~~ District Court, Detroit, Michigan
Baptist, and has a child named ~~Joseph Finter~~
Bath ~~December 14, 1918~~ New York, N.Y. Detroit, Michigan
with me

(6) My last foreign residence was ~~Attamer, Russia~~ I emigrated to the United States of
America from ~~Latvia, Russia~~ My lawful entry for permanent residence in the United States
was at ~~New York, N.Y.~~ under the name of ~~Mike Rosenberg~~
on ~~September 2, 1912~~ in the vessel ~~SS Bina~~
as shown by the certificate of my arrival attached hereto.

(7) I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching or believing in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to

~~The Union of Soviet Socialist Republics~~
of whom (which) at this time I am a subject (or citizen), and it is my intention to become a citizen of the United States. (8) I am able to speak the English language.
(9) I have resided continuously in the United States of America for the term of five years at least immediately preceding the date of this petition, to wit, since
~~September 3, 1912~~ and in the County of ~~Wayne~~
this State, continuously next preceding the date of this petition, since ~~March 1898~~ being a residence within said county of at least
six months next preceding the date of this petition.

(10) I have ~~not~~ heretofore made petition for Naturalization: Number ~~68~~
at ~~and such petition was denied by that Court for the following reasons and causes, to wit:~~

was at New York, N.Y., under the name of Ruth Rosenberg
on September 3, 1934, on the vessel SS Birma
as shown by the certificate of arrival attached hereto.

(7) I am not a disbeliever in or opposed to organized government or a member of or affiliated with any organization or body of persons teaching disbelief in or opposed to organized government. I am not a polygamist nor a believer in the practice of polygamy. I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to

The Union of Soviet Socialist Republics
of whom (which) at this time I am a subject (an enemy), and it is my intention to remain permanently in the United States. (8) I am able to speak the English language.
(9) I have resided continuously in the United States of America for the term of two years at least immediately preceding the date of this petition, to wit, since

September 3, 1932 and in the County of Wayne
this State, continuously next preceding the date of this petition, since March 1932, being a residence within said county of at least six months next preceding the date of this petition.

(10) I have not heretofore made petition for Naturalization; Number , on
at and such petition was denied by that Court for the following reasons and causes, to wit:

and the cause of such denial has since been cured or removed.
Attached hereto and made a part of this, my petition for citizenship, are two copies of my birth certificate from the Department of Labor of my said arrival, and the affidavits of the two verifying witnesses required by law.
Wherefore, I, your petitioner, pray that I may be admitted a citizen of the United States of America, and that my name be changed to

None desired

I, your above-said petitioner, being duly sworn, depose and say that I have ^{read} ~~heard read~~ this petition and know the contents thereof; that the same is true of my own knowledge except as to matters herein stated to be alleged upon information and belief, and that as to those matters I believe it to be true, and that this petition is signed by me with my full, free will.

Rebecca Mairenberg
(Copy the last true signature of petitioner.)

AFFIDAVITS OF WITNESSES

Samuel Baron, occupation Cutter
residing at 2675 Hazelwood Ave., Detroit, Michigan

Rose Baron, occupation Housewife
residing at 2675 Hazelwood Ave., Detroit, Michigan
each being severally, duly sworn, depose and say that he is a citizen of the United States of America; that he has personally known and has been acquainted in the United States with

Rebecca Mairenberg, the petitioner above mentioned, since Oct. 1, 1934
and that to his personal knowledge the petitioner has resided in the United States continuously preceding the date of filing this petition, of which this affidavit is a part, to wit, since the date last mentioned, and at Detroit, Michigan in the County of Wayne

this State, in which the above-entitled petition is made, continuously since Oct. 1, 1934, and that he has personal knowledge that the petitioner is and during all said periods has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and that in his opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

Rose Baron
(Signature of witness)

Samuel Baron
(Signature of witness)

Subscribed and sworn to before me by the above-named petitioner and witnesses in the office of the Clerk at Detroit
this 22nd day of October, Anno Domini 1934. I hereby certify that certificate of arrival No. 2-152132
from the Department of Labor, showing the lawful entry for permanent residence of the petitioner above named, Rebecca Mairenberg, has been by me filed with, attached to, and made a part of this petition on this date.

Clerk (SEAL)

No 9812

[fol. 25a]

Linsberg, J. J.

705 Grand

Detroit, Michigan

ADJOURNMENTS

FROM-

TO-

REASON

EXAMINER

FINAL HEARING

ADMITTED OR REJECTED

Date:

Grounds:

Examiner

RESULT OF EXAMINATION

C/ shows Rivke, which could be translated as
kebechen.

1525-P²
111166

Activity since 1/2/12

C/ shows Kiwke, which could be translated as
kebecon.

11166

City Massachusetts
S. since 9/2/12
City 1923
nt U. S. NO
de, Married 1 1/2
OK
t OK
only NO
rests NO
ines NO
Jail NO sworn
Examiner Ben F. Thompson
Date 10/12/37

Witness Samuel

City New York 10-4/9/13

Known to 1/12

1 X with in pouch m/n
except 1 1/2 yrs 1931 to May 1937
when wit. first Russian

City New York

Witness Married 1/14 to Samuel

with 1 X with in pouch m/n

[fol. 26a]

OPINION

(Entered August 11, 1955)

This is an action to cancel defendant's certificate of naturalization on two grounds (1) concealment of a material fact, and (2) wilful misrepresentation.

The proof is similar to that found in the case of *U. S. v. Nowak* decided July 15th, 1955 by this court, and the court finds that defendant did conceal (a) the fact that she was a member of the Communist Party when she filed her petition and when she obtained her citizenship; (b) that she was aware that the Communist Party, to which she belonged, was an organization having as an objective the overthrow of this government by force and violence; (c) that she was not a person of good moral character attached to the principles of the constitution of the United States and (d) well disposed to the good order and happiness of the same, and that, on the contrary, she represented that (a) she was a person of good moral character (b) attached to the principles of the constitution of the United States (c) well disposed to the good order and happiness of the same, and (d) not a member of any group opposed to those principles or having as an objective the overthrow of the government of the United States by force and violence.

It is apparent, therefore, that this court has adequate grounds for the cancellation of her citizenship.

However, there is one issue raised herein not present in any previous case. Defendant claims that this action should be dismissed because the government, before bringing an [fol. 27a] action to cancel defendant's citizenship, should have filed a proper affidavit showing "good cause" as provided in §1451(a), Title 8, USC. Such an affidavit presumably in compliance with the law was admittedly filed but defendant contends that it was not sufficient.

On this point, we hold that the affidavit is sufficient.

The affidavit declares that the statements therein are taken from the official records. Defendant's counsel contends that the affidavit should contain a statement to the effect that the person making the affidavit had a belief in the truthfulness of the statements therein, and that the record that was being cited was true and correct.

To begin with, there is a presumption that recorded acts of government officials and general records are regular (LaPorte v. Bitker, 145 F2d 445), a presumption which can be overcome only by clear evidence to the contrary (Reines v. Woods, 192 F2d 83). While it does not appear probable under these circumstances that an attorney making an affidavit would purposely misquote the record, it is possible, and defendant should have the opportunity to make an examination and to check those records, but the presumption still remains in favor of their accuracy. See U. S. v. Leles, 227 Fed 189; Turlej v. U. S., 21 F2d 696.

In addition, here the government went further than the law required. The wording of the law is that the affidavit must show "good cause"—that's all; here the affidavit not only said there was "good cause" which is sufficient (Schwinn v. U. S., 112 F2d 74) but it referred to many statements allegedly appearing in the official records to [fol. 28a] show on what this "good cause" was based.

Defendant's citizenship will be cancelled upon submission of the proper order.

/s/ FRANK A. PICARD/
U. S. District Judge

Dated: August 11, 1955.

ORDER OF CANCELLATION

At a session of said Court held in the Federal Building, at Detroit, Michigan, this 12th day of August, 1955.

Present: HONORABLE FRANK A. PICARD
United States District Judge

Upon the records and files of the above action and from a full hearing in open court, and in accordance with the opinion filed August 11th, 1955, and on motion of Dwight K. Hamborsky, Assistant United States Attorney for the Eastern District of Michigan,

IT IS ORDERED, ADJUDGED AND DECREED that the order of this Court entered on January 24, 1938, admitting the defendant Rebecca Maisenberg as a citizen of the United

States of America, be and the same is hereby revoked, set aside and declared void, and that the Certificate of Naturalization No: 4333671, issued by virtue of said order of January 24, 1938, be and the same is hereby cancelled and held to be null and void, and

[fol. 29a] It Is FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk of this Court transmit to the Immigration and Naturalization Commissioner at Washington, D. C., a certified copy of the judgment, order and decree, together with the original certificate of naturalization of the defendant, if in his possession; and

It Is FURTHER ORDERED, ADJUDGED AND DECREED that the defendant Rebecca Maisenberg be and she is hereby forever restrained and enjoined from setting up or claiming any rights, privileges, benefits or advantages whatsoever under said order of January 24, 1938, or under the Certificate of Naturalization No. 4333671 issued by virtue of said order.

/s/ FRANK A. PICARD
District Judge

Office - Supreme Court, U.S.

FILED

MAR 8 1957

JOHN T. FEY, Clerk

LIBRARY
SUPREME COURT, U.S.

Nos. 724-76
Nos. 724 and 749

In the Supreme Court of the United States

OCTOBER TERM, 1956

STANISLAW NOWAK, PETITIONER

v.

UNITED STATES OF AMERICA

REBECCA MAISENBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE BARKIN,

Solicitor General,

WARREN OLNEY III,

Assistant Attorney General,

HEATRICE ROSENBERG,

FELICIA DUBROVSKY,

Attorneys,

Department of Justice, Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 729

STANISLAW NOWAK, PETITIONER

v.

UNITED STATES OF AMERICA

No. 749

REBECCA MAISENBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the Court of Appeals (M. R. 31a-33a; N. R. 52a-54a; N. Pet. App. 4a-6a) ¹ is reported at 238 F. 2d 282. The opinion of the District Court in *Nowak v. United States*, No. 729 (N. R. 24a-35a) is reported at 133 F. Supp. 191.

¹ The designations "M." and "N." refer to *Maisenberg*, No. 749, and *Nowak*, No. 729, respectively.

The opinion of the District Court in *Maisenber*g v. *United States*, No. 749 (M. R. 26a-28a) is unreported.

JURISDICTION

The judgments of the Court of Appeals were entered on November 26, 1956 (M. R. 30a; N. R. 49a). The petition for a writ of certiorari in *Nowak* v. *United States*, No. 729, was filed on January 30, 1957, and in *Maisenber*g v. *United States*, No. 749, on February 4, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether knowingly false answers, at the time of naturalization in 1938, as to membership in an organization advocating the overthrow of the United States Government were sufficient grounds for denaturalization of petitioners.

2. Whether there was clear, unequivocal, and convincing evidence of fraud and concealment by petitioners of their membership in such an organization.

3. Whether an affidavit by an attorney of the Immigration and Naturalization Service, based upon a review of the Service's files, meets the "good cause affidavit" requirement under *United States* v. *Zucca*, 351 U. S. 91.

4. Whether the doctrine of *res adjudicata* applies to a denaturalization decree based on fraud and concealment of material facts.

5. Whether the orders denaturalizing petitioners violate the First and Fifth Amendments.

STATUTES AND REGULATION INVOLVED

The pertinent statutes and regulation provide as follows:

The Nationality Act of 1906, as amended;

Section 4, paragraph 4 (34 Stat. 596, as amended, 8 U. S. C. (1934 ed.) 382:

No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. * * *

Section 7 (34 Stat. 598, 8 U. S. C. (1934 ed.) 364):

No person who disbelieves in or who is opposed to organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of officers generally, of the Government of the United States, or of any other organized government, because of his or their official character, or who is a polygamist, shall

be naturalized or be made a citizen of the United States.

Section 15 (34 Stat. 601, as amended, 8 U. S. C. (1934 ed.) 405) (replaced in 1940 by Section 338 (a) of the Nationality Act of 1940):

It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner of Immigration and Naturalization or Deputy Commissioner of Immigration and Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. * * *

Section 338 (a) of the Nationality Act of 1940 (54 Stat. 1158, 8 U. S. C. (1940 ed.) 738 (a) (replaced by Section 340 of the Immigration and Nationality Act of 1952, 66 Stat. 260):

It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such

order and certificate of naturalization were illegally procured.

Section 340, Immigration and Nationality Act of 1952 (66 Stat. 260; 8 U. S. C. 1451 (a)):

It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 310 of this title in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively: * * *

The Act of October 16, 1918 (40 Stat. 1012, as amended, 8 U. S. C. (1934 ed.) 137):

SECTION 1. That the following aliens shall be excluded from admission into the United States:

* * * * *

(c) Aliens who believe in, advise, advocate, or teach, or who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, * * *

(d) Aliens who write, publish, or cause to be written or published, or who knowingly circulate, distribute, print, or display, or knowingly cause to be circulated, distributed, printed, published, or displayed, or who knowingly have in their possession for the purpose of circulation, distribution, publication, or display, any written or printed matter, advising, advocating, or teaching, opposition to all organized government, or advising, advocating or teaching: (1) the overthrow by force or violence of the Government of the United States or of all forms of law, * * *

Section 2. That any alien who, at any time after entering the United States, is found to have been at the time of entering, or to have become thereafter, a member of any one of the classes of aliens enumerated in section 1 of this Act, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported * * *.

Section 8 of the Act of March 2, 1929 (45 Stat. 1512), amending the Nationality Act of 1906, in part:

The Commissioner of Naturalization, with the approval of the Secretary of Labor, shall make such rules and regulations and such changes in the forms prescribed by section 27 of this Act as may be necessary to carry into effect the provisions of the naturalization laws.

Code of Federal Regulations (1938 ed.), Title 8, Section 70.7:

Wherever practicable, preliminary examinations of applicants for naturalization and their witnesses will be made in person. The princi-

pal purpose of such examinations is to obtain information bearing upon the applicant's admissibility to citizenship and the qualifications of the witnesses, rather than to obtain responses for record purposes. Both the applicant and the witnesses shall be carefully interrogated to determine whether the applicant has complied with the jurisdictional requirements of law, is mentally and morally qualified for citizenship, is attached to the principles of the Constitution, and is well disposed to the good order and happiness of the United States * * *.

STATEMENT

1. No. 729, Stanislaw Nowak.

Petitioner emigrated to the United States from Poland in 1913 and was admitted to United States citizenship by a decree entered by the United States District Court for the Eastern District of Michigan on June 13, 1938 (R. 2a, 3a). On December 23, 1952, the United States Attorney filed a complaint in the same court (pursuant to Section 338 (a) of the Nationality Act of 1940) alleging that such citizenship had been illegally and fraudulently procured and praying that the decree of naturalization be set aside (R. 2a-7a). The complaint and the amendment thereto alleged *inter alia* that, at the December 1937 preliminary hearing on his petition for naturalization, petitioner made a false and fraudulent representation to the naturalization examiner in that he testified under oath that he had never been a member of the Communist Party, that he fully believed in the government of the United States and did not belong to

any organization which advocated the overthrow of the existing government, whereas in fact he had been a member of the Communist Party from 1935 until 1938, and knew that the Party advocated the violent overthrow of the government of the United States. It was alleged that petitioner gave the false testimony and concealed the material facts to induce the Immigration and Naturalization Service to recommend the granting of the petition (R. 5a-6a, 13a-14a).

Attached to the complaint was an affidavit by an attorney of the Immigration and Naturalization Service, who stated that, from his examination of the records of the Service, it appeared that in the pre-naturalization proceedings petitioner had alleged that he was attached to the principles of the Constitution of the United States, that he did not belong to any organization which taught or advocated the overthrow of the existing government and that he was not and never had been a member of the Communist Party, but that petitioner's allegations were in fact false in that he had become an active member of the Communist Party in 1935 and continued such membership to the date of the complaint; and that petitioner and the Communist Party advocated the violent overthrow of the United States Government and circulated literature to that effect (R. 7a-12a).

At the trial, two naturalization examiners, who had questioned petitioner at the time his petition for naturalization was filed, testified that they inquired of petitioner whether he was or ever had been a member of the Communist Party, and that petitioner answered "No." The witnesses did not make any

notations on the petition as to his membership in the Party but testified that they remembered having asked that question because they had heard, previous to the examination, that petitioner, who had gained notoriety in encouraging strikes, was a Communist (R. 23a, 26a). The examiners did note on the petition that petitioner approved of sitdown strikes as being necessary to enforce the strikers' demands and that he was arrested once for encouraging such strikers to "hold the fort" (R. 23a).

In his Preliminary Form A-2214 for a Petition for Naturalization, which was introduced in evidence at the trial, petitioner had answered "No" to question 28 which read "Do you belong to or are you associated with any organizaion which teaches or advocates anarchy or the overthrow of existing government in this country" (R. 18a-19a).

Unimpeached and uncontradicted testimony of witnesses acquainted with petitioner's Communist Party membership, as found by the District Court, may be summarized as follows (R. 28a-29a):

Witness Budenz—Attended closed Communist Party meetings with Nowak from late 1937 until 1943 or 1944; knew Nowak to be a Communist Party member for these years; attended enlarged National Committee meetings of Communist Party with Nowak, one in 1938 and two in the forties.

Witness Fountain—Attended closed Communist Party meetings in Detroit with Nowak from June 1937 through 1938; knew Nowak to be a Communist Party member; attended Communist Party schools where Nowak lec-

tured on "Strategy of the Communist Party in relation to labor, and rise of Hitler."

Witness Eager—Nowak solicited Eager's membership in Communist Party in 1937; knew Nowak was a Communist Party member and attended many closed Communist Party meetings from 1937 through 1938.

Witness Nowell—Knew Nowak was a member; he solicited Nowak's membership; was present at his induction; attended closed Communist Party meetings from 1935 through 1936 with Nowak.

Witness Hewitt—Knew Nowak to be a member of the Communist Party in 1938; collected Communist Party dues from Nowak in 1938 and 1939; attended closed Communist Party meetings with Nowak.

Witness Reno—Knew Nowak to be a Communist Party member from July or August 1937 to December 1938; attended functionary meetings with Nowak; closed Communist Party meetings and an enlarged National Committee meeting in December 1938 with Nowak; also saw his Communist Party card.

Witness Rataj—Attended one closed Communist Party meeting with Nowak in fall of 1937.

Witness Herbster—Attended one closed Communist Party meeting with Nowak in summer of 1937.

The following evidence was also adduced at the trial:

Nowell and Baxter testified that they attended the Lenin Institute in Moscow and were taught that the Communist Party in the United States aimed to over-

throw the United States Government by force and violence and that they later taught in Communist Party schools and meetings that such was the aim of the United States Communist Party. They said that they were also taught the science of civil warfare for the purpose of destroying the United States Government and establishing a proletarian dictatorship and that the Party in the United States was bound by the decisions of the Communist International (N. Pet. 12-13). Nowell further testified that he successfully solicited petitioner's membership to the Party and that at the time petitioner made a brief analysis of capitalism and the conditions under which the Party operated. He pledged his allegiance to the Party and expressed his full agreement with the theories and the leadership. Nowell testified: " * * * I quote as nearly as possible—he stated that the working class could never achieve its objectives or get its rights under capitalism, that it would be necessary to destroy—I am reasonably sure of the word 'destroy'—capitalism and set up a government of the workers" (N. Pet. 13, 38).

Fountain testified that petitioner told him that the goal of the Party's activities was to extend the Soviet system around the face of the earth and to achieve that end "you try to win control of your union for the Communist Party; you agitate an election, you work by trying to win elections and get people elected to office, Communists and otherwise, and that this is to be carried on year in and year out, seeking control for the Communist Party." And if "[y]ou can't get it that way then it may be necessary to use violence

to get it, to win control for the Communist Party and the Communist system" (N. Pet. 38-39).

Eager testified that petitioner said "we couldn't depend too much on the ballot to gain our objectives but that it would eventually resolve to bullets, and it was only by the same militancy of the workers in the plants that we, as leaders, would be able to establish a Soviet America" (N. Pet. 37).²

The District Court said that it made no finding as to whether the naturalization examiners asked petitioner about his Communist Party membership since, due to the lapse of time and lack of any notation on the petition relating to the question, it felt that it was unlikely that the examiners actually remembered questioning petitioner as they testified and, hence, that their testimony was not "clear, unequivocal and convincing" on this issue (R. 26a-27a). But it found that petitioner was a member of the Communist Party of the United States from 1935 to at least through 1938 and probably up to the present time, that he knew that its main objective was the violent overthrow of the United States Government and approved of that goal, and that he intended to and did conceal such membership when he signed his petition for naturalization and answered question 28 on that subject in the negative (R. 27a). Accordingly, the District Court entered a judgment setting aside the 1938 decree which had made petitioner a citizen (R. 35a-36a).

² The government also introduced in evidence some of the literature distributed by the Party, including Marx's and Engels' *Communist Manifesto*, writings by Stalin, and Lenin's *State and Revolution* (N. Pet. 11-12).

The Court of Appeals affirmed (R. 49a; N. Pet. App. 6a).

2. *No. 749, Rebecca Maisenberg.*

Petitioner was born in Russia in 1901 and arrived in the United States in 1912 (R. 1a, 22a). She was admitted to United States citizenship in the United States District Court for the Eastern District of Michigan on January 24, 1938 (R. 2a). In March 1953, in the same court, pursuant to the Immigration and Nationality Act of 1952, the United States Attorney filed a complaint which alleged that her citizenship was obtained by concealment of material facts and by willful misrepresentation, in that in her Preliminary Form A-2214 for a Petition for Naturalization (R. 22a-24a) she answered "No" to a question which read "Do you belong to or are associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country." The complaint alleged that from 1930 until the date of her naturalization she was a member of the Communist Party, and that to her knowledge the Party during the years of her membership prior to her naturalization, 1930-1938, advocated the violent overthrow of the United States Government (R. 2a-8a). Attached to the complaint was an affidavit by an attorney of the Immigration and Naturalization Service, based upon a review of petitioner's Service file, which was similar to the one filed in *Nowak*, except it did not state that petitioner was specifically asked about membership in the Communist Party (R. 8a-12a).

At the trial, it was stipulated that certain witnesses would testify that from 1929 to 1950 the Communist Party advocated the violent overthrow of the United States Government and distributed revolutionary literature (R. 18a-21a).

Witness Nowell, a former member of the Communist Party of the United States, testified that he assisted in recruiting petitioner into the Party in 1930 and he remembered "more or less specifically" telling her at that time that the objective of the Party she was joining was the overthrow of the government of the United States by force and violence. She replied that she agreed with that policy (Pet. App. 1a, 3a-4a). Although Nowell did not always specifically advise all new members of this ultimate objective, he advised petitioner because "she had a good understanding of the program" and "had been a sympathizer for a long time" previous to joining (Pet. App. 5a). During his membership in the Party, Nowell was taught that the Communist Party of the United States was part of the "parent" organization, the Communist International, whose decisions were binding upon each member of the Party. While a member, petitioner was a Section Organizer and as such responsible for effecting the policies of the District Bureau. Her duties consisted of transmitting the decisions of the District Bureau to the Section membership and implementing them, directing the Party membership in the Section through the Section Bureau and the unit organizers and serving as "the physical and political contact between the District Committee and the Bureau and the Section

Committee of that Section" (Pet. App. 1a). During Nowell's membership in the Party from 1930 through 1936, he discussed the aims of the Communist Party with petitioner frequently and found that she adhered to the principles and objectives of the Communist Party (Pet. App. 2a). In her capacity as Section Organizer, she gave reports on decisions and policies of the District Bureau and the Central Committee. It was also her duty to explain the political theories to the members (Pet. App. 2a). In discussing the aims of the Party to its members, following the abolition of the "T. U. L." (sic, probably the Trade Union Unity League) and preparatory to the Seventh National Congress of the Communist International either in 1934 or 1935, she said that the essential line of the Party including "the overthrow of the system and government and the establishment of a Soviet America had not changed" (Pet. App. 6a-7a). The petitioner also attended several hundred meetings during Nowell's membership, at some of which the objective of the Communist Party of overthrowing the existing United States Government was discussed (Pet. App. 7a, 9a).

Witness Reno, who had been Organization Secretary for the Michigan District of the Communist Party from 1931-1934 and 1937-1938, testified that petitioner was a Section Organizer in Detroit and a member of the District Committee from 1933 through 1938. He "guessed" that he attended "probably" more than 200 closed Party meetings with petitioner (Pet. App. 10a). In his official capacity, he held dis-

cussions with the Section Organizers individually and as a group. These discussions related to membership, dues, Party policies and "usually—in fact nearly always" the distribution of Party literature. Reno did not remember his specific discussions with petitioner, but he remembered definitely that he talked with her individually on the subjects enumerated above (Pet. App. 10a-12a).

Witness Stewart, who was a member of the Communist Party from 1931 to 1937, testified that in December 1931 he and petitioner attended the Communist Workers School near Detroit. The books used in the school were the *Communist Manifesto*, Lenin's *State and Revolution*, and other books by Engels and Marx (Pet. App. 13a). At the school they were taught that the ultimate aim of the Party was the establishment of a proletarian government in the United States by the violent overthrow of the existing government and that only the Communist Party would succeed at such a revolution. They were taught that discussions sharpening the class struggle, support of strikes and demonstrations of workers were all means to effectuate the ultimate objective. They were instructed not to cooperate with the courts or the police. The school teachings included a study of Communist Parties all over the world, with particular emphasis on the Party in Russia and on the successful revolution in Russia and how it was achieved, with a view to improving the Communist Party of the United States and teaching its members how to bring about such a revolution here (Pet. App. 13a-20a, 27a-28a). They were also taught that the Communist Interna-

tional taught revolution by violence (Pet. App. 27a). In working with Stewart, petitioner encouraged him to recruit members because she said it was necessary to increase the membership so that a successful revolution could be achieved (Pet. App. 20a-24a). She also encouraged the distribution of literature to "get the people to read the literature" and thereby eventually cause the revolution (Pet. App. 25a). Stewart further testified that he understood, as all Communists did, that the main aim of the Communist Party was the overthrow of the existing United States Government (Pet. App. 26a-27a).

Witness Baldwin, a member of the Communist Party for the F. B. I. from 1943-1952, saw petitioner at various meetings in 1944 and at the State Convention in 1944. In 1944 petitioner was Club Chairman of the West Side Club; later she became Literature Director of the Communist Party Book Store for District Seven of Detroit, Michigan, and she was on the State Board of the Communist Party. As Literature Director it was her responsibility to see that all of the Marxist-Leninist and Engels books, and other revolutionary books and periodicals, were distributed to the Party members. This witness said that the Literature Department was the "mainstay" of the Party since it was through educational work that people would be educated in the revolutionary movement (Pet. App. 29a-30a).

Witness Syrakis, Secretary of the Greek Political Bureau, Communist Party of the United States, testified that he first met petitioner at a general meeting of the Party at which Earl Browder spoke. At that

meeting petitioner sat with the Party's functionaries. At closed meetings of the Party, Syrakis heard petitioner say that it was important for Party members to run for public office to show their strength because that show of strength would be important in the eventual revolution. At a Party school meeting, petitioner said that the Party should utilize its strength among the working class "so when the time comes we will have them as our allies for the ultimate aim" (Pet. App. 31a-34a, 36a-37a).

Witness Elder, who became a member of the Party in 1936, testified that he attended about four closed meetings of the Communist Party through 1942, which petitioner also attended. At one of the meetings in 1936, the speaker at the meeting said that in view of the then current sitdown strikes the time was ripe to recruit workers and to distribute Communist literature including the "Daily Worker" (Pet. App. 37a-40a).

The District Court found that petitioner "did conceal (a) the fact that she was a member of the Communist Party when she filed her petition and when she obtained her citizenship; (b) that she was aware that the Communist Party, to which she belonged, was an organization having as an objective the overthrow of this government by force and violence;" and that she "was not a person of good moral character and attached to the principles of the United States Constitution." It prefaced its opinion with the statement that "the proof [in this case] is similar to that found in the case of *United States v. Nowak*, decided July 15, 1955, by this court * * *", and made no ad-

ditional findings (R. 26a-28a). It entered a judgment setting aside the 1938 decree which had made petitioner a citizen (R. 28a-29a). The Court of Appeals affirmed (R. 30a; N. Pet. App. 6a).

ARGUMENT

Each petitioner contends that the evidence is insufficient, under the standard of "clear, unequivocal and convincing evidence",² to establish the falsity of his statement in the naturalization proceedings (in answer to a question) that he had never been a member of an organization which advocated the overthrow of the existing government of the United States. Neither makes any challenge to the evidence which established, not merely membership in the Communist Party, but also active participation as a fairly high-level functionary in the work of the Communist Party at the time of naturalization. The gist of the argument in both petitions is that the courts below were not justified in finding, as they did, that these active functionaries knew that the Communist Party advocated the violent overthrow of the government and willfully concealed that fact. There is no merit to this contention or in petitioners' other grounds for review.

1. At the outset, it should be pointed out that arguments based on the fact that the word "violence" did not appear in question 28 (which asked whether the applicant for naturalization was a member of an organization which advocated the overthrow of exist-

² *Schneiderman v. United States*, 320 U. S. 118, 158, and *Baumgartner v. United States*, 322 U. S. 665.

ing government) serve to detract from, rather than support, petitioners' contention that fraud and concealment were not established by their negative responses to that query. Whatever little room for dispute there may be as to whether petitioners knew that the Communist Party advocated the violent overthrow of the government (see *infra*, pp. 22-25), there can be none at all that they knew that the Party advocated the overthrow of the existing government. Hence, there can be no doubt that their answers to question 28 were knowingly and willfully false.

Even in the absence of proof of knowledge of the Party's advocacy of violence, that false answer could not be deemed immaterial to the naturalization proceeding. The question involved here is not the validity of a naturalization certificate issued on the basis of known facts as to Party membership. The significant point is that the naturalization court was prevented from making an adjudication on the true facts because of petitioners' concealment and misrepresentation. If petitioners had answered question 28 accurately, the true situation could have been explored at the time. A truthful answer would have permitted inquiry into the nature of petitioners' advocacy of the overthrow of the existing government.

And there can be no doubt that, at the time of petitioners' naturalization, a finding of advocacy of violent overthrow—the finding that was made in these cases by the trial court, whether required or not—would have justified denial of naturalization. For, at the time of their naturalization, petitioners would have been subject to deportation under the express provi-

sion of Section 2 of the Act of October 16, 1918, *supra*, pp. 5-6, which required deportation of aliens who were members of an organization which advocated, or which distributed literature advocating, overthrow of the government by force and violence. Those provisions governing deportation must be considered a part of the statutory criteria for citizenship since it can hardly be supposed, as petitioners urge (N. Pet. 27; M. Pet. 15), that Congress intended that citizenship be granted to aliens who at the same time were disqualified from continued residence because of their political affiliations. Cf. *United States v. Thind*, 261 U. S. 204, 215. Thus, the fact that the 1906 Act did not specifically refer to advocacy of violent overthrow as a bar to naturalization did not prevent the Immigration and Naturalization Service from questioning applicants on that issue. Moreover, Section 70.7 of the Naturalization Regulations *supra*, pp. 6-7 promulgated under the 1929 Act, which amended the 1906 Act, directed the careful examination of applicants to determine if they were morally qualified for citizenship and attached to the principles of the Constitution. Questions as to advocacy of the violent overthrow of the United States Government were appropriate in a naturalization proceeding to determine petitioners' qualifications for citizenship on such grounds. Cf. *Genovese v. United States*, 133 F. Supp. 820 (D. N. J.), affirmed, 236 F. 2d 757 (C. A. 3), certiorari denied, 352 U. S. 952, and *Corrado v. United States*, 227 F. 2d 780 (C. A. 6), certiorari denied, 351 U. S. 925, where although arrests were not specifically mentioned in the law as a basis for

denial of citizenship, a false statement relative to arrests was held a proper basis for denaturalization.

For these reasons, we think the dispositive issue was whether petitioners were guilty of willful concealment when they answered question 28. Even in the light of their own interpretation of that question, the fraud in their answer is clearly and unequivocally established.

2. The District Court interpreted question 28 more favorably to petitioners than they do themselves, and possibly more favorably than was required. Perhaps on the basis that the word "overthrow" in that question carried the connotation of violence, the judge found, as he evidently thought he had to find, that petitioners, at the time they answered the inquiry, knew that the Communist Party advocated the overthrow of the government by violence. That finding is amply supported by the evidence.

(a) The sufficiency of the evidence to support the finding that, in the relevant period (1930-1938), the Communist Party did advocate the overthrow of the government by force and violence presents no problem for review in this Court. The sufficiency of similar findings on similar evidence has been too often upheld to require consideration at this time. *United States ex rel. Harisiades v. Shaughnessy*, 187 F. 2d 137 (C. A. 2), affirmed, 342 U. S. 580, relating to the 1930's. See *In re Saderquist*, 11 F. Supp. 525 (D. Me.), affirmed, 83 F. 2d 890 (C. A. 1). Petitioners' reliance on *Schneiderman v. United States*, 320 U. S. 118, as being to the contrary, is misplaced. In that

case, where naturalization had occurred in 1927, the issue was the applicant's personal attachment to the principles of the Constitution at the time of his naturalization—thus placing in issue the applicant's own understanding of Communist doctrine. In that context, this Court held that the evidence in the record as to the Communist Party's advocacy of the use of force and violence was not sufficient to meet the required proof (for purposes of denaturalization) of Schneiderman's own state of mind, but the Court specifically refused to determine the factual issue of the Party's advocacy of force. 320 U. S. at p. 158.

(b). Likewise without merit is the challenge (M. Pet. 15-16; N. Pet. 33-42) to the sufficiency of the evidence to support the finding that each petitioner knew that the Communist Party (during the period of their membership and at the time of naturalization) advocated the violent overthrow of the government. There is in each case direct and undisputed evidence that each was taught that the violent overthrow of the government was the ultimate objective of the Communist Party and that each embraced that doctrine.

(i) As to petitioner Maisenberg, the evidence summarized in the Statement, *supra*, pp. 13-18, shows that she, an active and militant worker in the Party, was not only informed of the revolutionary aims of the Party, but that she consistently advocated that objective and suggested the means to achieve it. There was no attempt to impute to her one of two possible theoretical positions, as the Court found was done in

Schneiderman. In her case, the record established her personal advocacy of militant revolution.

(ii) The record also supports the finding that petitioner Nowak knew and embraced the aim of the Communist Party to achieve the violent overthrow of the government. This would be a reasonable enough inference from his importance in the Party hierarchy and the care which was taken to keep his membership secret but there is also, as with Maisenberg, the evidence summarized in the Statement, *supra*, pp. 9-12, which shows his advocacy of the Party's objective and the means to achieve it.

(c) Moreover, despite the refusal of the trial court to base its finding thereon,* we think that Nowak's denaturalization is supported by the evidence that he was asked and falsely answered a direct question as to his membership in the Communist Party. See the Statement, *supra*, pp. 8-9. This Court is not bound by the findings of the trial court in denaturalization cases. *Baumgartner v. United States*, 322 U. S. 665, 670-671; see also *Genovese v. United States*, *supra*; *Cufari v. United States*, 217 F. 2d 404, 408-409 (C. A. 1). The record here is that the two naturalization examiners testified that they specifically questioned Nowak at the time that he filed his petition for naturalization as to whether he had ever been a member of the Communist Party, and that he answered "No".

* As shown in the Statement, *supra*, p. 12, the court based its decree of denaturalization on the falsity of petitioner's answer to question 28 in his petition for naturalization.

They explained their recollection of his case, as distinguished from many others, by his notoriety and by the rumor that he was a Communist. This is clear, unequivocal, and convincing evidence that this petitioner knowingly and falsely denied membership in the Communist Party. That alone would support his denaturalization. *Sweet v. United States*, 211 F. 2d 118 (C. A. 6), certiorari denied, 348 U. S. 817.

3. Petitioners challenge (N. Pet. 19-24; M. Pet. 10) the affidavits of good cause attached to the denaturalization complaints as insufficient because they were based on a review of the files of the Immigration and Naturalization Service and were not founded upon personal knowledge. This contention is said to be based upon the Court's ruling in *United States v. Zucca*, 351 U. S. 91. But there the Court decided only that an affidavit showing good cause was a procedural prerequisite to maintenance of a denaturalization proceeding: The sufficiency of the affidavit was not involved since no such affidavit had been filed. The only description in the majority opinion of the type of affidavit required was the general language (*id.* at p. 99) that while the complaint states ultimate facts "the affidavit must set forth evidentiary matters showing good cause for cancellation of citizenship." This does not seem to us to mean that the evidentiary facts may not be stated upon information and belief where the basis of such information and belief is set forth.

Petitioners' reliance on the cases under the Fourth Amendment, which declares that "no warrants shall

issue, but upon probable cause, supported by oath", is misplaced. This Court defined probable cause in *Brinegar v. United States*, 338 U. S. 160, 175, 176, as follows: "Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed." It rejected the earlier dictum of *Grau v. United States*, 287 U. S. 124, 128, to the effect that the facts must be evidence which is competent to convict and said, 338 U. S. at p. 175:

In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved.

While the Court in the *Brinegar* case was dealing with probable cause to search without a warrant, its discussion of *Grau* and other decisions relating to search warrants (338 U. S. at pp. 174-176, particularly fns. 13 and 15) shows that the "probable cause" definition there laid down was intended to apply generally to all searches. Its ruling has so been interpreted in *Washington v. United States*, 202 F. 2d 214 (C. A. D. C.), certiorari denied, 345 U. S. 956, and *Hawkins v. United States*, 238 F. 2d 265 (C. A. D. C.), petition for a writ of certiorari pending, No. 538 Misc., this Term.

Similarly, criminal proceedings can be initiated, and usually are, on indictments or information which are not based on personal knowledge. *Costello v. United States*, 350 U. S. 359. If criminal proceedings can be initiated and search and arrest warrants can be issued on information and belief, rather than on personal knowledge, *a fortiori* an affidavit of good cause based on information rather than personal belief should be adequate to initiate a denaturalization suit. For what is involved here is merely the initiation of denaturalization proceedings, and that would not seem to be on a higher plane than the deprivation of property and personal rights involved in the execution of arrest and search warrants and the initiation of criminal proceedings.

The purpose behind the Court's requirement of a good cause affidavit is to provide a safeguard against the consequences—such as damage to reputation and standing in the community—of denaturalization proceedings brought without a preliminary showing of good cause. *United States v. Zucca, supra*, at pp. 99–100. Affidavits such as those involved here, based on a review of the Immigration and Naturalization Service's files, protect naturalized aliens against irresponsible denaturalization proceedings and thus meet the reason for the good cause affidavit requirement. See also *United States v. Costello*, decided May 21, 1956, unreported (S. D. N. Y.), Civil No. 79–309; *United States v. Chandler*, decided June 27, 1956, 142 F.

⁵ A copy of this decision appears at the end of the *Nowak* record.

Supp. 557 (D. Md.), where affidavits based on information from government files were held sufficient under *Zucca*.

The question of whether the affidavit is a "jurisdictional" requirement (N. Pet. 19-20; M. Pet. 10) in a denaturalization proceeding is not really presented here since affidavits were filed when the actions were initiated and their sufficiency was challenged in petitioners' answers to the complaints. The decision in *United States v. Diamond*, (S. D. Cal.), decided July 26, 1956, appeal pending (cited by petitioner Maisenberg (Pet. 10, fn. 7))—that such an affidavit is jurisdictional—was made, as is apparent from petitioner's own summary of the case, in a case in which no affidavit at all was filed with the complaint.

4. Petitioners also urge (N. Pet. 42-46; M. Pet. 17) that the doctrine of *res judicata* applies here in that the issues of petitioners' good moral character and attachment to the United States Constitution were conclusively adjudicated in the naturalization proceedings in 1938.

But where findings of fraud and misrepresentation are fully supported, as in *Knaue v. United States*, 328 U. S. 654, petitioners agree (N. Pet. 44; M. Pet. 17) that there is no occasion to reach the issue as to whether naturalization decrees are subject to cancellation for illegality on the ground the applicants were not in fact persons of good moral character during the years preceding naturalization and not in fact attached to the principles of the Constitution (133 F. Supp. 191, 195; M. R. 26a). The same situation exists in the present cases. Because of petitioners' conceal-

ment of their Party membership, the facts on which rest the present findings that they were not persons of good moral character and lacked attachment to the United States Constitution were not before, and could not be determined by the naturalization court. The issue of denaturalization power *in the absence of fraud* is therefore not presented.*

5. Equally without merit are the constitutional arguments advanced by petitioners (N. Pet. 46-49; M. Pet. 17-18)—that their orders of denaturalization violated the First and Fifth Amendments because they proscribe the advocacy of overthrow of the United States Government. The judgments do not invade rights protected by the First and Fifth Amendments but merely withdraw the privilege of citizenship which is revocable because it was granted through fraud and misrepresentation. Congress certainly could refuse citizenship to aliens who advocate the violent overthrow of the Government (see *Dennis v. United States*, 341 U. S. 494; *Harisiades v. Shaughnessy*, 342 U. S. 580; *American Communications Association v. Douds*, 339 U. S. 382; *Carlson v. Landon*, 342 U. S. 524), and therefore it can validly provide for withdrawal of that privilege from aliens who obtained it by fraudulent concealment of such advocacy. "An

* It may be noted that in *United States v. Ness*, 245 U. S. 319, this Court held that a certificate of naturalization could be set aside as illegally entered, even though the government had entered an appearance and raised the very objection later presented as grounds for denaturalization. It was held that Sections 11 and 15 of the Act of June 29, 1906 (34 Stat. 596), *supra*, p. 4, "were designed to afford cumulative protection against fraudulent or illegal naturalization" (245 U. S. at 327).

alien has no moral nor constitutional right to retain the privileges of citizenship" obtained by false evidence. *Johannessen v. United States*, 225 U. S. 227, 241; see also *Bindzyck v. Finucane*, 342 U. S. 76.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petitions for writs of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

BEATRICE ROSENBERG,
FELICIA DUBROVSKY,
Attorneys.

MARCH 1957.

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JOHN T. FEY, Clerk

No. 76

In the Supreme Court of the United States

OCTOBER TERM, 1957

REBECCA MAISENBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,

Solicitor General,

RUFUS D. McLEAN,

Acting Assistant Attorney General,

BEATRICE ROSENBERG,

CARL H. INLAY,

Attorneys,

Department of Justice, Washington 25, D. C.

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OPINIONS BELOW

The opinion of the Court of Appeals (App. 31-33) is reported at 238 F. 2d 282. The opinion of the District Court (R. 35-37; App. 26-28) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on November 26, 1956 (App. 30). The petition for a writ of certiorari was filed on February 4, 1957, and was granted on April 1, 1957. 353 U. S. 922. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

The questions common to this case and the companion *Nowak* case, No. 72, are set forth in the government's brief in No. 72 (N. Govt. Br., p. 2). In addition, the following additional question is now raised in this case:

Whether the fact that the new basis for denaturalization set forth in Section 340 (a) of the Immigration and Nationality Act of 1952—"concealment of a material fact or by willful misrepresentation"—might possibly be construed more broadly than "fraud" or "illegality" under Section 338 (a) of the Nationality Act of 1940, presents any problem pertinent to this case, since the "concealment" and "misrepresentation" charged and proved here were treated as fully the equivalent of "fraud," and "illegality" was not charged at all.

STATEMENT

1. Petitioner was born in Russia in 1901 and arrived in the United States in 1912 (App. 22). She was admitted to United States citizenship in the United States District Court for the Eastern District of Michigan on January 24, 1938 (App. 4, 16). In March, 1953, in the same court, pursuant to the Immigration and Nationality Act of 1952, the United States Attorney filed a complaint which alleged that her citizenship was obtained by concealment of material facts and by willful misrepresentation, in that in her Preliminary Form A-2214 for a Petition for Naturalization, filed June 30, 1937 (App. 3, 23), she answered "No" to a question (Question 28) which read, "Do you belong to

or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?" The complaint alleged that from 1930 until the date of her naturalization she was a member of the Communist Party, and that to her knowledge the Party during the years of her membership prior to naturalization, 1930-1938, advocated the violent overthrow of the United States Government (App. 2-8). The complaint also alleged that petitioner concealed material facts and testified falsely in her petition for naturalization filed on October 22, 1937 (in stating, *inter alia*, that she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States, and that she renounced all allegiance and fidelity to the Union of Soviet Socialist Republics), and in her oath of allegiance on January 24, 1938 (in stating that she would support and defend the Constitution and laws of the United States against all enemies foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation without any mental reservation or purpose of evasion) (App. 3).

The complaint also alleged that her representations in these particulars were untrue, and that she knew they were untrue, but concealed the true information (App. 6) "in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to conceal her lack of attachment to the principles of the Constitution; to induce the Immigration and Naturalization Service to make an unconditional recommendation to the Court that her petition

be granted; to preclude inquiry by the Court concerning her qualifications for citizenship; and to procure naturalization in violation of law.”

Attached to the complaint was an affidavit by an attorney of the Immigration and Naturalization Service, based upon a review of petitioner's Service file, which was similar to the one filed in the *Nowak* case, except it did not state that petitioner was specifically asked about membership in the Communist Party by the naturalization examiners (App. 8-12). The full text of the affidavit is set forth in the Appendix, *infra*, pp. 25-29.

2. The evidence in support of the judgment of denaturalization may be summarized as follows:

Petitioner admitted executing the Preliminary Form for Petition for Naturalization containing Question 28 (*i. e.*, “Do you belong to or are you associated with any organization which teaches or advocates anarchy or the overthrow of existing government in this country?”) (App. 22; Tr. 11-12); the petition for Naturalization (App. 2, 16, 24-25; Tr. 12-13); and the oath of allegiance (App. 3, 16).

Witness Nowell testified that, during the period of his membership in the Communist Party from June 1929 to the end of 1936,¹ he attended several hundred

¹ As in No. 72, Nowell described his various positions in the Michigan District of the Communist Party (Tr. 19-21), his directorship of the Workers' School in Detroit (Tr. 36), his work with the Daily Worker and the Workers' Book Store (Tr. 20, 36-37), and his attendance as a student first at the District School and then at the Lenin Institute in Moscow, Russia (Tr. 37-39, 68). He also testified that he attended meetings of the Anglo-American Commission of the Communist International in

closed Communist meetings with petitioner Maisenberg, on an average of about two a week (Tr. 19, 45, 74). Nowell first met her in 1929, and after several interviews with her, he and the organizational secretary of the Michigan District of the Communist Party recruited her into the Party as a member (Tr. 42, 69-71, 75). Nowell and the District Organizational Secretary, in order to insure that petitioner was in agreement with the aims of the Party before recruiting her, explained the program, policies, and final objective of the Party to her, including the ultimate aim of violent overthrow of the government, and she stated her agreement with those principles (Tr. 50, 58). This procedure was followed in this instance because petitioner Maisenberg had a good understanding of the Party when she came in, and did not need the indoctrination course given less advanced persons who were accepted as probationary members for training in the basic principles of Communism (Tr. 99-100, 102-103). Following her induction, Mrs. Maisenberg became first a unit organizer, then the organizer of the Oakland subsection in Detroit, and finally a member of the Michigan District Committee and organizer of Section One when Nowell left the Party in 1936 (Tr. 44). Nowell attended meetings of her unit frequently in the period 1930-1935 to give reports to the District Bureau and he became a member of her unit in 1935 (Tr. 45.) He saw her pay Communist dues in 1935 and 1936 (Tr. 44).

Moscow, and explained the structure of the Communist Party of the United States and its relationship to the Communist International (Tr. 22-30, 38-40).

As section organizer, the petitioner transmitted the decisions of the District Bureau to the section membership. She directed the general Party membership through the Section Bureau and the unit organizers (Tr. 46). She also interpreted policies and decisions of the Central Committee set forth in theoretical articles (Tr. 48). Nowell testified concerning a meeting in late 1934 or early 1935 which was held to explain to the membership the abolition of the Trade Union Unity League in accordance with a current educational campaign in the Party to prepare the members for a tactical reorientation prior to the Seventh National Congress of the Communist International. Petitioner gave the District Bureau report to the section membership and explained certain phases of this change. She told the section delegates that the "essential line of the Communist Party", which included "the overthrow of the system and government and the establishment of a Soviet America", had not changed (Tr. 106).

Nowell described other section meetings in Detroit Communist Headquarters, and elsewhere, which petitioner attended, where District Organizers Smees and Weinstone explained the basic policies of the Communist International, including "the overthrow of the government" and "breaking it up and establishing the dictatorship of the proletariat in the form of the Soviet". They explained that the tactical reorientation of the Party did not change that basic policy (Tr. 108).

Government witness Reno testified that he attended about 200 or more closed Communist meetings with

petitioner Maisenberg during the period of his membership from January 1931 to May 1942. Some of these were meetings of the general membership, section membership meetings, section organizer meetings, and meetings of the District Committee (Tr. 130, 136). In addition to other high Communist posts in Michigan and other states, Reno was section organizer of the East Side Section in Detroit in 1931, Organizational Secretary of the Michigan District in 1932 until February or March 1933 and again in late 1934 and 1935, and an instructor in the Workers' School in Detroit where he instructed unit and section functionaries in Marxism-Leninism, Problems of Communist Party Organization, trade union problems, and other subjects (Tr. 131-135, 142). Reno first met the petitioner in late 1931 when he would see her at weekly section organizers' meetings which she attended as the Section Organizer of the Oakland Section of Detroit (Tr. 136). Aside from this position, Reno testified that she was an organizer in other sections (Tr. 137-138) and a member of the District Committee of the Communist Party in Michigan from 1933 through 1938 (Tr. 137).² During his acquaintance with her, he had conversations with her about section business, the recruitment of new members, the application of Party policies in her section, and distribution of the Daily Worker and Communist Party literature (Tr. 141).

² As Organizational Secretary of the Michigan District of the Communist Party, Reno was responsible for the rolls and records of the Party (Tr. 135).

Government witness Stewart testified that he joined the Communist Party in 1931 and, aside from holding various offices in his Communist unit, he was an alternate member of the Michigan District Bureau (Tr. 125-126). Stewart testified that he attended a Communist school, the Workers' School, at Camp Liberty near Detroit, with petitioner Maisenberg from December 10th or 12th, 1931, to February 2, 1932 (Tr. 126-127, 150). The students, who were either selected or elected by their units to attend, lived at the school during their period of study and were taught by members of the District Bureau (Tr. 151-152, 154, 163). The curriculum at the school included the study of the Communist "classics" such as Marx's "Communist Manifesto", Lenin's "State and Revolution" and other Communist literature (Tr. 149, 153, 174). The students studied the history of the Russian Revolution as a guide for the eventual overthrow of the United States Government (Tr. 173, 234-235). District Bureau member Al Goetz told the class that the aim of the Communist Party was revolution. Other instructors stated that the Communist Party advocated a program of class struggle and revolution through violence, in accordance with the purpose of the Third International (Tr. 155, 157-159, 168, 227, 229-230). The students were taught that the ultimate aim of the Party was the establishment of the dictatorship of the proletariat and "that capitalism will not die, it has to be killed" (Tr. 157). They also studied Party structure throughout the world (Tr. 156), and learned that the Communist Party of the United States was a section of the Communist International (Tr. 170).

Stewart transferred from another unit to Section One in Detroit of which petitioner Maisenberg was the Section Organizer in 1934. He attended closed meetings with her about once a month from that time until early 1937 (Tr. 177-178, 182-183). He heard her discuss the "Org Letter," a communication from the District headquarters containing directives to be discussed by each section and unit of the Party (Tr. 183-184, 196-197). She also spoke of the necessity of building up the Party and circulating Communist literature to promote its revolutionary program (Tr. 202, 204).

Witness Syrakis testified that he was a Communist Party member in Detroit in 1934 and until September 1935, serving as the secretary of the Greek Political Bureau (Tr. 284-285). He first met the petitioner in the first part of 1935 at a closed general membership meeting at which Earl Browder explained the reasons that the Soviet Union joined the League of Nations (Tr. 285-286). Petitioner sat with the Party functionaries in the presidium (Tr. 286). Syrakis also attended other closed meetings with petitioner at the Communist Party headquarters and the Greek Workers Club (Tr. 287). At one such meeting, she explained that the Party was running candidates in the Michigan elections to show its strength, and that (Tr. 288) "we would need that strength when the time comes to overthrow the government" (Tr. 288).

In 1935, Syrakis attended a Party school at Communist Party headquarters where government witness Reno was the instructor and petitioner helped keep the school records. At this school, the students were

taught the use of the strike as a weapon to weaken the capitalistic classes, the organization of the Party, and the theory of the United Front (Tr. 288-292, 307-308). Petitioner gave a speech at this school in which she explained that the Communist Party had to be strong and utilize its power among the working classes "so when the time comes we will have them as our allies for the ultimate aim" which was "to overthrow the government by force" (Tr. 288-290, 292, 305).

Witness Elder joined a professional unit of the Communist Party in 1936, and during the period 1938-1941 was the financial secretary and literature distributor for the Twelfth Street Section in Detroit (Tr. 311-313). The petitioner was the Literature Director of the East Side Section during this period. Aside from other duties she distributed the Daily Worker in that section (Tr. 315, 322). Elder first met her at a meeting in the Finnish Hall in Detroit in 1936, where District Organizer Weinstone spoke. He saw her at other closed meetings at Yeman's Hall in Hamtramck, at the Mirror Ballroom where Earl Browder spoke, and at another meeting at the Jericho Temple in 1942 (Tr. 314, 318-322, 326). At the meetings at the Finnish and Yeman's Hall, petitioner gave a report on Communist recruiting for her section (Tr. 316-317). She also talked at Communist Party schools which Elder attended (Tr. 313-314, 317).

Witness Baldwin joined the Communist Party in May 1943 in Detroit and remained a member until February 12, 1952 (Tr. 247-248). In 1943, the witness was membership director of a Communist club; in the fall of 1946, she was the secretary of the Communist

organ, the Michigan Herald; in 1947, she was assistant membership dues secretary of District Seven of the Communist Party; in 1948, she was membership director of the Auto Miscellaneous Section; and in 1950, when the Party "went underground", she became a group leader in the Party (Tr. 247-251). The witness knew petitioner in 1944 as club president of the Oakland Communist Club, and later as the literature director of the Communist Book Store of District Seven, and a member of the State Board of the Communist Party. As literature director, petitioner's duties included distributing Communist Party literature to the clubs through the section organization (Tr. 254). This literature included the Marx, Lenin and Engels classics, and such periodicals as Political Affairs (which was sent directly from the Educational Department of the Central Committee of the Party in New York), Masses and Main Stream, The Daily Worker, and the Michigan Herald (Tr. 255).

Witness Baldwin attended approximately a hundred meetings with the petitioner in 1944 and prior thereto (Tr. 252-254). In the fall of 1944, the witness attended a closed meeting of petitioner's Communist club and saw her at the State Convention of the Communist Party that year (Tr. 252-253).

3. In addition to the foregoing testimony, both parties entered into a stipulation (App. 18-21; Tr. 12-16) providing, *inter alia*:

1. That if John Lautner were to testify in these proceedings he would testify that he was an active member and functionary of the Com-

munist Party of the United States from November 1929 to about January 1950;

2. That if Frank Meyer were to testify in these proceedings he would testify that he was an active member and functionary of the Communist Party of the United States from 1934 through 1945;

3. That if called as witnesses to testify in this proceeding John Lautner and Frank Meyer would testify that it was their understanding, on the basis of their membership, training, experience, and activities in the Communist Party of the United States and on the basis of the documents, pamphlets and literature hereinafter mentioned, which were circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period of their membership, the Communist Party of the United States advocated, taught, and advised the overthrow of the government of the United States by force and violence;

4. That if both John Lautner and Frank Meyer were to testify in these proceedings they would testify that the following literature was circulated, distributed, printed, or published by the Communist Party of the United States during all or part of the period from 1930, until the termination of their membership in the Communist Party of the United States:

(a) "The Communist Manifesto", by Carl Marx and Frederick Engels, by International Publishers, Inc.;

(b) "State and Revolution", by V. I. Lenin, copyrighted 1932 by International Publishers, Inc.;

(c) "Left Wing Communism and Infantile Disorder", by V. I. Lenin, copyrighted by International Publishers, New York, 1940;

(d) "Program of the Communist Internationale", copyrighted by Workers Library Publishers in 1929, third edition printed in February 1936;

(e) "Foundations of Leninism", by Joseph Stalin, copyrighted in 1939 by International Publishers, Inc.;

(f) "The Communist Party: A Manual on Organization", by J. Peters, Published in 1935 by the Workers Library Publishers;

(g) "The Struggle Against Imperialist War and the Tasks of the Communists", published by the Workers Library Publishers, second edition of July 1934;

(h) "Why Communism", by M. J. Olgin, published by Workers Library Publishers, December 1933;

(i) "Why every worker Should Join the Communist Party", published by Workers Library Publishers, Inc., no printing date being shown;

(j) "Problems of Leninism", by Joseph Stalin, copyrighted in 1934 by International Publishers Company, Inc.;

(k) "The Ultimate Aim", copyrighted in 1935 by International Publishers Company, Inc.;

(l) "Report to the Eighth Convention Communist Party", by Earl Browder, 1934, published by Workers Library Publishers;

(m) "Resolutions of the Seventh Congress of the Communist Internationale", published in 1935, Workers Library Publishers;

(n) "The Twenty-One Conditions of Admission into the Communist Internationale", by O. Piatnitsky, published by Workers Library Publishers; published February 1934.

4. The District Court first observed that (App. 26) "This is an action to cancel defendant's certificate of naturalization on two grounds (1) concealment of a material fact, and (2) wilful misrepresentation." The court found that (App. 26) "The proof is similar to that found in the case of *United States v. Nowak*, decided July 15, 1955 by this court," and on this basis held (App. 26):

* * * that defendant did conceal (a) the fact that she was a member of the Communist Party when she filed her petition and when she obtained her citizenship; (b) that she was aware that the Communist Party, to which she belonged, was an organization having as an objective the overthrow of this government by force and violence; (c) that she was not a person of good moral character attached to the principles of the constitution of the United States and (d) well disposed to the good order and happiness of the same, and that, on the contrary, she represented that (a) she was a person of good moral character (b) attached to the principles of the constitution of the United States (c) well disposed to the good order and happiness of the same, and (d) not a member of any group opposed to those principles or having as an objective the overthrow of the government of the United States by force and violence.

It is apparent, therefore, that this court has adequate grounds for the cancellation of her citizenship.

The opinion thus finds that petitioner swore falsely and concealed material facts in her Preliminary Form for a Petition for Naturalization, in her Petition for Naturalization, and in her oath of allegiance as charged in the complaint, in that, as in the *Nowak* case, the proof established that she was a Communist Party member with knowledge of the fact that that organization taught and advocated the violent overthrow of the United States Government at the time of her naturalization. The District Court thereupon entered a judgment setting aside the 1938 decree which had made petitioner a citizen (App. 26-28).

In a single opinion, the Court of Appeals affirmed the judgments below in both the instant case and *Nowak's* case (App. 30; N. Pet. App. 6a).

SUMMARY OF ARGUMENT

I

Petitioner adopts all the pertinent arguments set forth in the petitioner's brief in *Nowak*, No. 72. Since petitioner thus places her case on a parity with *Nowak's*, we also adopt for this case our argument in the Government's brief in that case, subject to two points of explanation:

A. This petitioner conceded in the courts below the sufficiency of the evidence and the validity of the findings in every aspect except that the District Court had found that the "objective" of the Communist Party was the overthrow of government, rather than that the Party "taught" or "advocated" overthrow. We discuss this issue in *Nowak* (N. Govt. Br., pp. 101-105). The evidence in this case overwhelmingly proves, not

only petitioner's membership, and the teaching and advocacy of overthrow by the Party, but also that she was fully aware of that fact, that she approved of the principle, and that she herself taught and advocated that principle on the Party's behalf. Every aspect of fraud was proved by ample evidence.

B. Secondly, petitioner's adoption of the argument in *Nowak* that Question 28 of the Preliminary Form for Petition for Naturalization was equivocal in its language would not, even if well taken, entitle her to a reversal. Her cancellation order was clearly based, in addition, on her misrepresentations and concealments in respect to her qualifications for citizenship in her petition for naturalization and in her oath of allegiance. We believe this also to be true for *Nowak*, but in petitioner's case there can be no doubt whatever.

II

The only additional issue raised by petitioner is her assertion that the new basis specified in Section 340 (a) of the Immigration and Nationality Act of 1952 (66 Stat. 260, 8 U. S. C. 1451 (a); see N. Govt. Br. p. 5)—the provision for cancellation on “the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation”—is ambiguous in two respects. She contends that (1) the new language, which was substituted for the term “fraud” used in Section 338 (a) of the Nationality Act of 1940, is capable of being construed so broadly as to authorize cancellation in cases not involving “the kind of fraud which traditionally vitiates judgments” and

hence is capable of being unconstitutionally applied, and that (2) the elimination of illegality as a basis for denaturalization in the new Act presents a problem in those cases where fraud cannot be proved. But neither of these questions, even if substantial, is relevant to the disposition of this case.

A. The allegations of the complaint and the findings of the District Court are plainly based on facts which spell out traditional fraud, and counsel agreed in their colloquy before the District Court that Section 340 (a) of the new Act was being no more broadly applied in this case than the former law. It is therefore unnecessary to consider hypothetical cases arising under the new Act where cancellation is sought on less than traditional fraud. *Watson v. Buck*, 313 U. S. 387.

B. The same argument applies in respect to the elimination of illegality as a basis of cancellation under the new Act. Petitioner's denaturalization was neither sought nor granted on the basis of illegality in its procurement, but only on the basis of fraud. Whatever problems may be engendered under the new Act in that respect are not before the Court in this case.

ARGUMENT

Petitioner adopts in her brief in this Court (M. Br., p. 11) "all of the pertinent arguments set forth in the Petitioner's brief in Nowak" (No. 72). In addition, since her denaturalization was predicated on Section 340 (a) of the Immigration and Nationality Act of 1952 (66 Stat. 260, 8 U. S. C. 1451 (a)), which substitutes "concealment of a material fact or by willful misrepresentation" as the basis for cancellation for the

former grounds of "fraud" and "illegality" under the Nationality Act of 1940, 8 U. S. C. (1940 ed.) 738 (a) (N. Govt. Br. pp. 4-5), she argues that the new language is uncertain in its meaning, and if too broadly applied would deprive her of due process.

I

Since petitioner thus places her case on a parity with that of petitioner Nowak in No. 72, we shall not reargue those issues here, but rather adopt our argument in the Government's *Nowak* brief, subject to two points of explanation:

A. We assume from the fact that petitioner Nowak attacks the sufficiency of the evidence in support of the cancellation order that petitioner Maisenberg adopts the same contention. The record, however, indicates beyond a doubt that this petitioner conceded her membership in the Communist Party. Defense counsel stated at the conclusion of the trial (Colloquy at conclusion of trial, p. 45), "I don't think there is any question on membership here. * * * I am not raising that question." When questioned further by the court on this admission "that she was and is a member of the Communist Party," counsel stated (*ibid.* p. 46), "I don't deny that it has been proved to the satisfaction of the court, and there is no issue raised here on the record on that." Even if this concession had not been made, testimony as to closed meetings that she attended numbering in the hundreds, her offices in the Party (including unit organizer, subsection organizer, section organizer, member of the Michigan District, section literature director, club president of the Oakland Communist Club, literature director of the Com-

munist Book Store, and member of the State Board of the Communist Party), and the other evidence concerning her membership, from 1929 at least to 1944, outlined in the Statement, *supra*, show that she was not only a member but an extremely active and important official of the Party in Michigan.

In her brief in the Court of Appeals, this petitioner further conceded as follows (Appellants Br., pp. 12-13):

In this case the Court found that Appellant had concealed and misrepresented membership in the Communist Party because it was an organization which had "as an objective the overthrow of the government of the United States by force and violence".

Appellant does not contend that there was insufficient evidence to support such a finding. She does assert, however, for the reasons stated (p. 9) that such finding cannot sustain the Order of Cancellation.

Her only attack on the findings of fact in the Court of Appeals was her claim that the District Court had found that the "objective" of the Communist Party was the overthrow of government, rather than that the Party "taught" or "advocated" overthrow. As we show in our brief in *Nowak* (N. Govt. Br., pp. 101-105), this is an erroneous assumption since the District Court plainly found the evidence sufficient under the exact charge of the complaint; the asserted variance does not exist. See also the Statement, *supra*, pp. 14-15, for the court's findings.

The evidence in this case, moreover, overwhelmingly establishes that, not only did the Communist Party

teach and advocate the overthrow of the government, but that this petitioner had full comprehension of that fact during her long proven membership in the Party, and that she herself taught and advocated the principle of overthrow on the Party's behalf. See the Statement, *supra*. Like Nowak's case, and perhaps even more so, this is not the case of an "innocent" who joined the Communist Party without being a revolutionary, but rather this is a hard-core case of an important Party functionary, familiar with and zealous for its advocacy of overthrow, who perpetrated a fraud on the naturalization court when she concealed the material fact of her membership, and swore that she was attached to the principles of the Constitution.

B. Secondly, petitioner's adoption of the argument in *Nowak* that Question 28 included in the Preliminary Form For Petition for Naturalization was equivocal in its language (see N. Govt. Br., pp. 91-93) would not, even it were well taken, entitle this petitioner to a reversal. Her cancellation order was clearly based, not only on the willful concealment of, and misrepresentation in respect to, the fact of her membership in an organization teaching or advocating the overthrow of existing government, but also in her misrepresentations and concealment with respect to her qualifications for citizenship in her petition for naturalization and in her oath of allegiance (see *supra*, pp. 14-15). We believe that the same is true in *Nowak's* case (see N. Govt. Br., pp. 117-123), but whatever question there may be in *Nowak* as to whether the court found fraud independently of the answer to Question 28, there can be no doubt on this issue in

this case. The validity of that holding is covered by the discussion in our *Nowak* brief (N. Govt. Br., pp. 117-123).

II

The only additional issue raised by petitioner is her assertion that the new basis for cancellation specified in Section 340 (a) of the Immigration and Nationality Act of 1952 (66 Stat. 260, 8 U. S. C. 1451 (a); see N. Govt. Br. p. 5)—the provision for cancellation on “the ground that such order and certificate of naturalization were procured by concealment of a material fact or by willful misrepresentation”—is ambiguous in two respects. First, she observes that this new language, which was substituted for the term “fraud” in Section 338 (a) of the Nationality Act of 1940 (8 U. S. C. (1940 ed.) 738 (a); see N. Govt. Br. pp. 4-5), is capable of being construed so broadly as to authorize cancellation in cases not involving “the kind of fraud which traditionally vitiates judgments”, and hence is capable of being unconstitutionally applied. Secondly, she contends that the elimination of illegality as a basis for denaturalization in Section 340 (a) of the 1952 Act poses an additional problem in those cases where there is no showing of fraud or a failure to satisfy some statutory requirement regarded by this Court as a condition precedent to the power of the naturalization court to act, in which case, she contends, the judgment of naturalization would be foreclosed from re-examination (M. Br., pp. 11-15).

But petitioner is wandering far afield; these issues are simply not presented in her case. The allegations

of the complaint charge "the kind of fraud which traditionally vitiates judgments" and the District Court, after having the issue drawn to its attention (Colloquy at Conclusion of Trial, pp. 14-20, 43-45), based its finding on proof of the same kind of fraud that was charged and found in *Nowak's* case where denaturalization was based on Section 338 (a) of the Nationality Act of 1940, 8 U. S. C. (1940 ed.) 738 (a). In fact, the court incorporated by reference its discussion on that issue from its *Nowak* opinion. On appeal, all parties treated the fraud issue in both cases as being identical on the facts presented.

A recent unreported decision of the Court of Appeals for the Seventh Circuit in *United States v. Minerich*, No. 12005 (December 5, 1957), has taken the position that, under Section 340 of the Immigration Act of 1952, 66 Stat. 260, 8 U. S. C. 1451 (a) (see N. Govt. Br. p. 5), proof of concealment (in the sense of passive non-disclosure of material facts) is insufficient to support a cancellation order in the absence of misrepresentation (false swearing). In that case, the Court of Appeals found no evidence to show that the applicant actually misrepresented any fact, and the case was tried on the theory that it was incumbent on him to volunteer information material to his naturalization examination and that a breach of that duty constituted concealment within the terms of Section 340 of the Immigration and Nationality Act of 1952.³ Regardless of the validity of that construc-

³ In 1928, when *Minerich* was questioned, the Preliminary Form for Petition for Naturalization was not in use (see N. Govt. Br., p. 93, fn. 31). At *Minerich's* preliminary examination

tion, however, the problem is not involved in this case because every act of concealment charged in the complaint (App. 2-8), and included in the District Court's findings (App. 26-28), is coupled with an act of active misrepresentation of the true facts material to the court's inquiry into petitioner's qualifications for citizenship. Thus, whether or not the grounds for denaturalization set forth in Section 340 of the new Act are broader than the term "fraud" in Section 338 (a) of the Nationality Act of 1940, in this case the findings of willful concealment combine with the misrepresentation of material facts to constitute "fraud" under the narrowest interpretation of the cancellation provisions of Section 340.

Since petitioner has at no time urged that Section 340 (a) of the Immigration and Nationality Act of 1952 was being too broadly applied *in her case*, or more broadly than Section 338 (a) of the Nationality Act of 1940 is being applied in *Nowak's case*, it is apparent that this case presents no real problem of interpreting the new language of the 1952 Act. This

he answered negatively and correctly when asked whether he had ever been arrested (he was subsequently arrested but was not questioned on this issue) (slip op. p. 13). The Court of Appeals distinguished this situation from that in *United States v. De Francis*, 50 F. 2d 497 (C. A. D. C.), where the applicant at the naturalization hearing stood mute when the court asked the question whether there was proof of conviction of the sale of intoxicating liquor, the truth of which was known only to him.

The Court of Appeals in *Minerich* found no evidence that Minerich was asked and denied that he was a Communist in 1928 (a second basis on which cancellation was sought) (slip op. p. 18).

Court has consistently refrained from rendering advisory opinions on hypothetical situations not necessary to the disposition of the case at hand. *Watson v. Buck*, 313 U. S. 387, 402; *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, 461; *United Public Workers v. Mitchell*, 330 U. S. 75, 89.

The same argument applies with respect to the omission of illegality as a specific basis for cancellation under the new Act. The complaint alleged only concealment and misrepresentation and not illegality (App. 2-8); the findings in petitioner's case (unlike Nowak's) are based on fraud alone; and it was conceded in the legal arguments by counsel in the trial court that illegality was not involved (Colloquy at Conclusion of Trial, p. 44). Accordingly, any problem which might be involved in a hypothetical case, under the new Act, involving illegal procurement of naturalization, without proof of fraud, is not pertinent to the decision of this case.

CONCLUSION

For the foregoing reasons, and those set forth in our brief in No. 72, we respectfully submit that the judgment of the Court of Appeals should be affirmed.

J. LEE RANKIN,

Solicitor General.

RUFUS D. MCLEAN,

Acting Assistant Attorney General.

BEATRICE ROSENBERG,

CARL H. IMLAY,

Attorneys.

JANUARY 1958.

APPENDIX

C-4333671

UNITED STATES OF AMERICA,

District of Columbia, ss:

Reuben Speiser, being duly sworn, deposes and says:

1. That he is an Attorney, Immigration and Naturalization Service, United States Department of Justice, and as such has access to the official records of the said Service, from which the following facts appear:

(a) That one Rebecca Maisenberg filed a petition for naturalization in the United States District Court at Detroit, Michigan, on October 22, 1937 and was admitted to citizenship by that court on January 24, 1938, receiving naturalization certificate No. 4333671.

(b) That in the proceedings which led to her naturalization, the said Rebecca Maisenberg alleged under oath:

(I) That the only names ever used by her were Rebecca Rosenberg and Rebecca Maisenberg.

(II) That she fully believed in the form of government of the United States; and that she did not belong to and was not associated with any organization which teaches or advocates the overthrow of existing government in this country.

(III) That she was attached to the principles of the Constitution of the United States and well disposed to the good order and happiness

of the United States; that it was her intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the Union of Soviet Socialist Republics, of which she was a subject or citizen.

(IV) That she would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that she would bear true faith and allegiance to the same; and that she took this obligation freely without any mental reservation or purpose of evasion.

(c) That the allegations of said Rebecca Maisenberg as set forth in subparagraph I (c) were false and untrue.

(d) That the said Rebecca Maisenberg has been an active member of the Communist Party of the United States since 1930; and, in connection with such membership had used and been known by the name of Rebecca or Rifka Lee.

(e) That the Communist Party of the United States is an organization which at all times since 1930, as the said Rebecca Maisenberg well knew:

(I) Advised, advocated, or taught the overthrow by force or violence of the government of the United States;

(II) Advised, advocated, or taught the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers of the government of the United States because of his or their official character;

(III) Advised, advocated, or taught the unlawful damage, injury, or destruction of property;

(IV) Advised, advocated, or taught sabotage;

(V) Wrote, circulated, distributed, printed, published, or displayed, or caused to be written, circulated, distributed, printed, published, or displayed or had in its possession for the purpose of circulation, distribution, publication, issuing, or display, written and printed matter which advised, advocated, or taught the performance of the acts described in subparagraphs 1 (e), I, II, III, and IV;

(VI) Promoted, influenced, and advanced the political activities, public relations, and public policy of the Union of Soviet Socialist Republics.

(f) That at all of the times above mentioned, as the said Rebecca Maisenberg well knew, the Communist Party of the United States was a section of an international organization whose principal officers were citizens or subjects of the Union of Soviet Socialist Republics and the principal offices of which were situated in Moscow, in the Union of Soviet Socialist Republics; that decisions made by such organizations were binding upon other Communist Parties, including the Communist Party of the United States and the individual members thereof, whether such decisions were contrary to the laws of the United States or not.

(g) That by reason of the foregoing, the said Rebecca Maisenberg at the time she applied for and obtained naturalization: was not attached to the principles of the Constitution or well disposed to the good order and happiness of the United States; did not intend to support and defend the Constitution and laws of the United States against all enemies, foreign and do-

mestic; and did not intend to abjure or renounce allegiance and fidelity to the Union of Soviet Socialist Republics.

(h) That the said Rebecca Maisenberg intentionally and deliberately made false statements and concealed the true facts in the proceedings leading to her naturalization, as set forth in the preceding subparagraphs, in order to prevent the making of a full and proper investigation of her qualifications for citizenship; to induce the naturalization examiner to make an unconditional recommendation to the court that her petition be granted; to preclude inquiry by the court concerning her qualifications for citizenship; and to procure naturalization in violation of law.

2. That good cause exists for the institution of a suit under Section 340 (a) of the Immigration and Nationality Act (Public Law 414, 82nd Congress) to set aside and cancel the naturalization of said Rebecca Maisenberg as having been procured by concealment of material facts and by wilful misrepresentation.

3. That the last known place of residence of said Rebecca Maisenberg is 2493 West Philadelphia, Detroit, Michigan.

REUBEN SPEISER,
Attorney.

Subscribed and sworn to at Washington in the District of Columbia this 10th day of March 1953, before me, the Assistant General Counsel of the Immigration and Naturalization Service, United States Department of Justice, authorized by Section 332d.1 of

Title 8 of the Code of Federal Regulations to administer oaths.

ALBERT T. REITZEL,
Assistant General Counsel.